(29,292)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 742.

J. HARROD LEHMANN, PLAINTIFF IN ERROR,

vs.

STATE BOARD OF PUBLIC ACCOUNTANCY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 5, 1923.

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1-3 **Organization of Court.**

STATE OF ALABAMA,
Montgomery County:

At a regular term of the Circuit Court of Montgomery County, in Equity, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled: J. Harrod Lehmann v. State Board of Public Accountancy, et als.:

4 THE STATE OF ALABAMA,
Montgomery County:

IN THE

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA.

J. HARROD LEHMANN

VS.

ALABAMA STATE BOARD OF ACCOUNTANCY et al.

Original Bill.

To the Honorable Walter B. Jones, as Judge of the Circuit Court of Montgomery County, Ala.:

Your petitioner, J. Harrod Lehmann, respectfully represents and shows unto your Honors as follows:

I.

That your Petitioner, J. Harrod Lehmann, is a citizen of Jefferson County, State of Alabama, and over the age of twenty-one years.

II.

That Mayer W. Aldridge, and James S. Edson, are each over the age of twenty-one years, and residents of Montgomery County, Alabama; that George T. Rosson is over the age of twenty-one years, and a resident of Mobile County, Alabama; that said Mayer W. Aldridge, James S. Edson and George T. Rosson constitute the Alabama State Board of Public Accountancy, appointed and acting under the provisions of an Act of the Legislature of Alabama approved February 17th, 1919, entitled "An Act to regulate the practice of public accountancy, etc."; that J. F. Kastner is over the age of twenty-one years, and affiant is informed and believes is a non-resident of the State of Alabama, and a resident of the State of Illinois;

that Francis B. Latady is over the age of twenty-one years, and is a resident of Jefferson County, Alabama.

II.

That your Petitioner, J. H. Lehmann, is by profession a public accountant; that he has been engaged in said work for a number of years, and had been engaged in the practice of this profession for a number of years before February 17th, 1919; that he has a large clientage and a large volume of business, and his offices and principal place of business are in the City of Birmingham, Alabama; that the said profession is trying and exacting; that it requires long preparation and experience to become qualified to practice said profession.

Petitioner further avers that by great expense and years of preparation he has qualified himself to engage in the practice of this profession, and that by long years of experience and assiduous attention to this duties he has built up a large and lucrative clientage, and has established a large and lucrative business conducted under his name and under and by his personal supervision, and by efforts and energies from his office in the City of Birmingham, Alabama.

III.

Petitioner further avers that upon the appointment of the Alabama State Board of Public Accountancy he applied for and was issued a certificate after standing the tests and examinations prescribed, and that since that time he has been practicing his profession as a certified public accountant.

IV.

Petitioner avers that the said J. F. Kastner is a Public Accountant working at this time out of the office of P. L. Crawford & Company in Chicago, Illinois; that Francis B. Latady is a public accountant and has an office in the City of Birmingham, Alabama.

V.

That Section 7 of an Act to regulate the practice of public accountancy, etc., approved February 17th, 1919, reads as follows:

"Section 7. That the Alabama State Board of public accountancy may revoke any certificate issued under this act, or may cancel the registration of any certificate under this act, for any unprofessional conduct of the holder of such certificate, or for other sufficient cause, provided, that written notice shall have been mailed to the holder of such certificate twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a day for a full hearing thereon by said board, and provided, further, that no certificate issued under this act shall be revoked until such hearing

shall have been heard." (Section 7, page 127, Acts of Alabama 1919.)

VI.

That the said Board of Public Accountancy has never adopted any Code, or promulgated any rule or defined or declared what is or is not professional conduct, or what is or is not sufficient cause for the revocation of the certificates issued by said Board, and that the same is not in any way defined or declared in the Act itself.

VII.

Your petitioner received under date November 17th, 1921, a letter from the Secretary of the Alabama State Board of Accountancy, a copy of which letter is hereto attached and marked Exhibit
6 "A"; that there was enclosed in said letter a copy of alleged charges signed or preferred by one J. F. Kastner, upon which it was sought to revoke the degree and certificate of certified public accountant heretofore granted to your said petitioner, J. Harrod Lehmann. A copy of said charges is hereto attached and marked Exhibit "B", and made a part of this petition.

VIII.

Your petitioner avers that on the date appointed, namely, the 6th day of December, 1921, he appeared, at the place appointed in person and by Counsel, and demanded of the State Board of Public Accountancy there in session to know the character and nature of the evidence which would be required or permitted, and the rules that would govern the hearing, and he was informed by the said Board that there were no rules in effect to govern or control the hearing, and that the evidence submitted would be received with some liberality, and in effect that the Board would use its own descretion as to the character and sufficiency of evidence offered.

At this hearing the said J. F. Kastner was not present, but there was present at the time the said Francis B. Latady, who appeared to act in a role similar to that of prosecuting attorney, or for the purpose of representing the said Kastner.

Without entering into the hearing, or deciding any questions in regard thereto, the meeting was adjourned and the hearing continued until the 26th day of January, 1922, and your said Petitioner was notified to be back on that date for the purpose of being tried upon the charges set out in Exhibit "B" hereto attached.

IX.

Your Petitioner respectfully represents unto your Honor that is is nowhere averred in said written charge filed against him that anything that he did was wrongful or unlawful, the only allegation being that the alleged acts complained of were surreptitious.

X.

Your Petitioner further avers that the copy of the alleged charges served on him was not signed or sworn to; that the first paragraph of said charges relates to matters in part ante-dating the passage of the said Act of the Legislature; that nothing in the first paragraph of said charges alleges what is or was wrongful, unlawful or improper.

XI.

That the second paragraph of said charges alleges that on July 5th, 1918, your petitioner withdrew from the bank account
7 of said corporation, and appropriated to his own use, One Hundred ($100.00) Dollars; that on July 15th, 1918, Petitioner in like manner withdrew the sum of Sixty ($60.00) Dollars.

Your Petitioner avers that the said items of One Hundred ($100.00) Dollars and Sixty ($60.00) Dollars were withdrawn by Petitioner with the knowledge and assent of Mrs. M. C. Traylor, who was President and practical owner of the said corporation; that said items were items of money owed by said corporation to the said J. Harrod Lehman and that said withdrawal of such items was for the purpose of paying that amount to which he was entitled, and that the method of payment was by the direction and with the full knowledge, assent and authority of the said Mrs. M. C. Traylor, the President and practical owner of such corporation; that there was nothing wrongful, surreptitious or unlawful in the payment of either of said items; that the said items in the second paragraph of said charges refer to matters happening, as alleged, on July 5 and July 15th, 1918, whereas, the Act under which the said Board purposes to hear and try your Petitioner was not approved and did not become a Law until February 17th, 1919, some six months thereafter.

XII.

The averments of the third paragraph of said written charges are untrue in this: that there was nothing wrongful, surreptitious or unlawful in the withdrawal from the bank account of the said corporation of any sums at any time as therein charged; that said J. Harrod Lehmann, at different times, used his own money and his own credit for the purpose of meeting the obligations, and promoting the welfare of the said corporation; that this was done with the full knowledge, authority and consent of the said Mrs. M. C. Traylor, the President, Manager, and practical owner of said corporation; that at the times referred to your Petitioner was the Secretary and Treasurer of the said corporation, and that he, on each and every occasion referred to, re-paid the money which he had borrowed from the said corporation, and that the said Mrs. M. C. Traylor, the President and Manager of said corporation, had full knowledge of each and every such transaction, and that said arrangement was

a reciprocal arrangement between your Petitioner and the said corporation, which she fully understood, authorized and assented to, as shown by her affidavit hereto attached, and made a part hereof, marked Exhibit "C".

XIII.

That the averments of the fourth paragraph of said written charges are so drawn and tabulated as to intimate, or attempt to create the impression that your Petitioner, J. Harrod Lehmann, at one time had in his possession, or had appropriated to his own use an amount of money equivalent to Forty-seven Hundred ($4,700.00) Dollars, whereas, the truth is that each and every note signed or endorsed by the said corporation was promptly paid by your Petitioner on or before maturity, and at no time was the credit or endorsement of said corporation ever used without full knowledge, authority and consent of the said Mrs. Mabel C. Traylor, President and Manager of said corporation, and practical owner of the same; that the averments of the fourth paragraph of said bill are vicious, unfair and unjust in that it is sought to create the impression thereby that your Petitioner was guilty of a great wrong, and charging in effect that your Petitioner was guilty of embezzling a large sum, and the truth is that your Petitioner was only doing that which he was fully authorized to do, and which was rightful and proper in the premises.

8

XIV.

The fifth paragraph of said written charge avers that an inventory of December 31st, 1920, used by Petitioner was inflated over its cost to the extent of, to-wit. Two Thousand ($2,000.00) Dollars; that said inventory was taken at list price when same should have been inventoried at the list price less a trade discount.

Petitioner avers that the stock listed in the inventory related to optical goods, and same was of such character that it required highly technical knowledge for the purpose of appraising, and that in line with the custom and practice of all accountants in a similar situation, he relied upon the inventory prepared and made out by the persons who had such technical knowledge, and upon whose judgment he had the right to rely. He denies that there was any inflation, or that the inventory was other than fair and just.

XV.

Your Petitioner further represents and shows unto your Honor that the Traylor Optical Company was engaged in the optical business in Birmingham, Alabama, having originally been started by Traylor & Stanton, and upon the withdrawal of Mr. Stanton, the business was conducted by Mr. Traylor, who met sudden death in an automobile accident. Thereupon, the business which had been incorporated under the name of Traylor Optical Company, Mrs. M.

C. Traylor being the President, Manager and practical owner of said business; that the capital stock of the company was Five
9 Thousand ($5,000.00) Dollars, consisting of fifty (50) shares of One Hundred ($100.00) Dollars each; that at the time she took charge of the business it was in bad shape and grew worse; that she was without money or credit to continue the operation of the business, which was on the verge of failure; that the said Mrs. M. C. Traylor induced your Petitioner to take charge of the business, and look after the finances of the same, and to that end gave him full and absolute authority to take any steps in connection with the same that he desired.

Petitioner avers that it was necessary for him to extend his credit, and frequently to furnish cash for the operation of the business, and on many occasions your petitioner on leaving town would leave signed blank checks on his personal account with which obligations of the company could be met; that petitioner during a portion of the time was Secretary and Treasurer of the company, and that he did nothing set out in the written charges which was not known to the said Mrs. M. C. Traylor, and authorized and assented to by her.

XVI.

Your Petitioner expressly denies that he was guilty of anything wrongful, surreptitious or unlawful in his connection with the business of said corporation, either as Secretary and Treasurer or as public accountant or otherwise.

XVII.

Your Petitioner avers that this is the height of the busy season for public accountants, and that this is particularly true of the business of your petitioner because of the great volume of income tax work, and other work related thereto; that the purposed hearing will inflict upon your Petitioner irreparable injury; that the attempt to try him or hold the purposed hearing by said Board will greatly damage and injure your Petitioner's business, and greatly injure your Petitioner in person and reputation, and will inflict upon him irreparable injury, and petitioner avers that he has no adequate remedy at Law.

XVIII.

Your Petitioner avers that no where in the Act are any rules prescribed for the contemplated hearing before the said State Board of Accountancy; that said Board has no way to compel the attendance of witnesses, or the production of records; that your Petitioner has no way to compel the attendance of witnesses in his own behalf; that there are no rules of procedure laid down in said Act, and that the said Board of Public Accountancy has no where adopted
10 any rules or Code of pro*dec*ure.

XIX.

Your Petitioner avers that the said Board has prejudged this case in this: that said Board has held a meeting and considered the charges filed, and that the said Board has made up its mind to revoke your petitioner's certificate upon final hearing even though legal evidence of the sufficiency of the facts alleged in such charges is not forthcoming.

Petitioner further avers that the determination by said Board as to whether or not petitioner's certificate shall be revoked rests wholly within the arbitrary, uncontrolled, and unappealable judgment of said board.

Petitioner further avers said Section 7 of the Act hereinabove set out is unconstitutional and void for the following reasons: First: It is in violation of Section 45 of the Constitution of Alabama of 1901, in that said Act does not contain but one subject clearly expressed in its title; Second: That it does not give the petitioner, or other person charged thereunder, benefit of due process of Law, and is in violation of the due process of Law clause of the Federal Constitution, and is in violation of Section 13 of the Constitution of Alabamma of 1901; Third: That said Section 7 is unreasonable, uncertain and indefinite, and neither this Act nor the Law defines what is or what constitutes unprofessional conduct, or other sufficient cause justifying the revocation of such certificate.

The question of whether any alleged act is unprofessional or constitutes sufficient cause for the revocation of the certificate is not defined in the Act or any rules or Code promulgated by said Board, but is left entirely to the ex post facto judgment of the individuals who happen to constitute the Board at the time the decision is made.

XX.

Your Petitioner further represents that for a long number of years before the passage of said Act he had been engaged in the business as public accountant; that by hard work and attention to his duties, and conscientious service and loyalty to his employers, he had built up an extensive and valuable business and clientage; that he attaches to the original petition in this cause filed the originals of a few letters testifying to his character and standing, said letters being marked Exhibits D, E, F, G and H, and made a part hereof.

That the effect of the purposed hearing will be to work irreparable injury upon the business and reputation of your petitioner; that the purposed hearing is unwarranted, unjust, unlawful and
11 arbitrary; that the manner in which the purposed hearing is to be conducted is arbitrary, without rules of procedure previously adopted, without rules of evidence, pleading or practice, without opportunity for the accused to test the legal sufficiency of the alleged charges, or to compel the attendance of witnesses, or

the production of papers in his behalf, and without means or provision for appeal from the decision of the said Board.

Your Petitioner further avers that whatever might be the result of said hearing, that irreparable injury would be done to your Petitioner by the publication before the said Committee of grossly libelous and untrue statements based upon hearsay, or other flimsy and unsubstantial and illegal testimony.

Wherefore, premises considered, your Petitioner prays that the said State Board of Public Accountancy, and that the said Mayer W. Aldridge, George T. Rosson and James S. Edson, Esquires, and each of them, be enjoined and restrained from proceeding to hear or attempt to conduct and hear the trial of your Petitioner upon said charges preferred, and that they be forever enjoined and restrained from making or entering any order revoking or attempting to revoke the certificate heretofore issued to your Petitioner, or from interfering in any way, manner or character with the practice of his profession, or the performance of his work by your Petitioner as such certified public accountant.

And Petitioner further prays that the said J. F. Kastner and the said Francis B. Latady, Esquires, be enjoined and restrained from further preferring or prosecuting alleged charges before the said State Board of Public Accountancy against your Petitioner, or from making or doing any act which would interfere with your Petitioner in and about the practice of his said procession, or the performance of his said work, or the conduct of his said business, or that would have the effect or alienating any clients of your said Petitioner.

And Petitioner prays for such other, further and different relief as he may be entitled to in the premises, and he will ever pray, etc. J. Harrod Lehmann. Erle Pettus, Attorney for Petitioner.

12 THE STATE OF ALABAMA,
Jefferson County:

Before me, the undersigned authority in and for said County and State, this day personally appeared J. Harrod Lehmann, who is known to me, and who, being first duly sworn, says that he is the J. Harrod Lehmann named in the foregoing Petition; that he has carefully read over and understands the averments of said petition; that the averments of fact made in said Petition are true as therein made; that the averments on information and belief affiant is advised or informed are true, and believes same to be true. J. Harrod Lehmann.

Sworn to and subscribed before me this 24th day of January, 1922. Imelda Fearing, Notary Public.

13 **Exhibit "A" to Bill.**

George T. Rosson, Mobile. James S. Edson, Montgomery.

The Alabama State Board of Accountancy.

M. W. Aldridge, Chairman.

P. O. Box 695, Montgomery.

Montgomery, Ala., November 17th, 1921.

Mr. J. Harrod Lehmann, Jefferson County Bank Bldg., Birmingham, Alabama.

DEAR SIR: I beg to enclose herewith a copy of a petition, which has been filed with this Board governing the revocation of your certificate. This matter has been set down for hearing on the 6th day of December, 1921, at nine o'clock in the Senate room at the State Capitol, at which time you may appear if you see fit to do so. Yours very truly, J. S. Edson, Secretary. JSE/S.

14 **Exhibit "B" to Bill.**

EXHIBIT "B."

To the Honorable Mayer W. Aldridge, George T. Rosson, and James S. Edson, constituting the Alabama State Board of Public Accountancy:

Under the provisions of Section 7 of an Act of the Legislature of Alabama, approved February 17, 1919, and entitled "An Act to regulate the practice of public accountancy, etc.," the undersigned, J. F. Kastner, hereby petitions the Alabama State Board of Public Accountancy to revoke the degree and certificate of Certified Public Accountant heretofore, under the provisions of said Act, granted by said State Board to J. Harrod Lehmann, of Birmingham, Alabama, and for grounds of revocation sets forth the following:

1. That the said J. Harrod Lehmann was, from, to-wit, July 1, 1918, down to, to-wit, March 31, 1921, the auditor of the Traylor Optical Company, a corporation, of Birmingham, Alabama; that during a part of that time he was also Secretary and Treasurer of said corporation; that he or the partnership of which he was a member, and which was composed of the said J. Harrod Lehmann and one R. H. McIntosh, was, during the period aforesaid, in full charge of the keeping, writing, maintenance, auditing, and examination of the books, accounts, and records of said corporation; that the said J. Harrod Lehmann, individually or as a member of said partnership of Lehmann and McIntosh, had full authority to sign checks and notes, withdrawing the corporation's funds from its bank account and obligating it to pay money to others, during the period aforesaid.

2. That on July 5, 1918, the said J. Harrod Lehmann withdrew from the bank account of said corporation, and appropriated to his own use the sum of $100.00; that on July 15, 1918, the said J. Harrod Lehmann withdrew from the bank account of said corporation, and appropriated to his own use, the sum of $60.00.

3. That on, to-wit, March 31, 1919, the said J. Harrod Lehmann withdrew from the bank account of said corporation, and appropriated to his own use, the sum of $60.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, July 3, 1920, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $60.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, August 11, 1920, the said J. Herrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $300.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, September 10, 1920, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $125.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, October 5, 1920, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $500.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, October 19, 1920, the said J. Herrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $222.31, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, December 3, 1920, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $400.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, December 18, 1920, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $120.00, which he afterwards surreptitiously restored to the said corporation's bank account; that on, to-wit, January 5, 1921, the said J. Harrod Lehmann withdrew from the bank account of the said corporation, and appropriated to his own use, the sum of $250.00, which he afterwards surreptitiously restored to the said corporation's bank account.

4. That at sundry time- during the period aforesaid the said J. Harrod Lehmann borrowed from the First National Bank at Birmingham, Alabama, sums of money, giving the said corporation's notes therefor, and appropriating the said sums to his own use. That the said notes were given upon the dates and for the amounts following, to-wit:

October 11, 1918	$300.00
December 10, 1918	200.00
February 14, 1919	300.00
April 12, 1919	150.00
June 11, 1919	300.00
July 30, 1919	200.00
October 14, 1919	300.00
December 15, 1919	200.00
January 8, 1920	250.00
March 1, 1920	350.00
May 1, 1920	400.00
June 15, 1920	300.00
August 19, 1920	150.00
October 30, 1920	650.00
January 26, 1921	650.00
Total	$4,700.00

5. That in closing the books of the said corporation for the year 1920 and in determining the net profit for the year 1920, a part of which as bonus was paid to him, the said J. Harrod Lehmann used an inventory as at December 31, 1920, which was inflated
16 over its cost to the extent of, to-wit, $2,000.00, having permitted said inventory to be taken at list price, when the said Lehmann well knew that the actual cost of the articles inventoried was at list price less a trade discount of from 10 per cent to 33 1/3 per cent. —— ——, Petitioner.

STATE OF ALABAMA,
Jefferson County:

Personally appeared before me, —— ——, a Notary Public in and for said County and State, J. F. Kastner, who is known to me, and who, being by me first duly sworn, deposes and says that the contents of the above and foregoing petition are true.

Subscribed and sworn to before me this the — of November, 1921. —— ——, Notary Public.

17 **Exhibit "C" to Bill.**

EXHIBIT "C."

THE STATE OF ALABAMA,
Jefferson County:

Before me, the undersigned authority in and for said County and State, this day personally appeared Mrs. Mabel C. Traylor, who being by me first duly sworn, deposes and says as follows:

My name is Mabel C. Traylor. I reside at Birmingham, Alabama. The Traylor Optical Company was engaged in the optical business in Birmingham, Alabama, the business having originally been started by Traylor & Stanton. Mr. Stanton withdrew from the busi-

ness, and it was then operated by Mr. Traylor, my late husband, during his life time. The business was incorporated under the name of Traylor Optical Company before the death of my husband, who was killed in an accident. Upon his death, the entire business belonged to me. I was the owner of practically every share of stock. I still own and control all the stock in the company except ten (10) shares. The capital stock is Five Thousand ($5,000.00) Dollars, consisting of fifty (50) shares of One Hundred ($100.00) Dollars each. Upon the death of my husband, it was necessary to make some arrangement to continue the operation of the business, which was then in bad shape, and which rapidly grew worse. I made an arrangement with Mr. J. H. Lehman to look after the financial end of the business, giving him full and absolute authority to do whatever was necessary, proper or convenient in that behalf. I first made Mr. R. H. McIntosh, who was formerly a partner of Mr. Lehman's, secretary and treasurer of the company. Mr. McIntosh went to War in the latter part of 1917, at which time, I made Mr. J. H. Lehman the secretary and treasurer of the company.

I have seen a copy of the charges preferred by one J. F. Kastner against Mr. J. H. Lehman with the State Board of Public Accountancy, and have carefully noted the specific charges therein made.

Mr. J. F. Kastner had no authority of any kind or character from me to prefer any such charges, and this action on his part was taken without my knowledge or consent. If he had consulted me in regard to the matter, I would have explained that Mr. J. H. Lehman had full authority to use the credit of the Traylor Optical Company as therein shown, and that the same was done with my full knowledge and consent; that at various times Mr. Lehman furnished money for the Traylor Optical Company, and always endorsed notes for that company, and extended his credit to the Traylor Optical Company to enable it to keep in operation and in business;
18 that the said company could not borrow money without the endorsement of Mr. J. H. Lehman, and that whenever he used the credit of the company in his own behalf, it was with my knowledge and consent, and by my authority, and was merely a matter of reciprocity between him and this company, which was practically owned and controlled by me individually.

In reference to the items of money which it is charged were withdrawn by Mr. Lehman, and retained by him, this was money which was due him, and it was paid to him in this manner with full authority.

In reference to the charge in regard to the making of the inventory, I know that he was expected to rely upon the employees of the company in regard to the value of the stock. The manner in which this inventory was taken was the same as the method that had been used for years, and was in accordance with the usual custom. There could have been no ulterior motive on the part of Mr. Lehman in inflating the value of this stock as shown by this inventory. While it is true that he was entitled to a bonus amounting to fifteen per cent at the end of the year, in the interest of the busi-

ness he gave away half of his portion in the bonus to other employees of the company to promote the welfare of the company, and to reward these other employees who deserved some consideration at the hands of the company.

I have already ratified and confirmed everything that was done by Mr. Lehman in connection with his business with the company, the truth being that same was done with my full knowledge, consent and authority. I have known him for about ten (10) years, and know him to be a man of integrity and uprightness, and instead of feeling that he deserves any censure for anything that he did on behalf of the business, or in connection with same, I feel that he is entitled to my thanks and appreciation, and to the gratitude of everyone interested in this concern for the manner in which he was able to aid it in its financial affairs during the critical and trying times of the War, and the period succeeding the same.

Before signing and swearing to this affidavit, I have carefully read over each and every word therein, and I fully understand the effect of the same, and say without any reservation that all of the statements made therein are absolutely true. Mrs. Mabel C. Traylor.

Sworn to and subscribed before me this 5th day of December, 1921. Imelda Fearing, Notary Public.

19 **Exhibit "D" to Bill.**

EXHIBIT "D."

Birmingham, Ala., December 5, 1921.

State Board of Certified Public Accountants, Montgomery, Alabama.

GENTLEMEN: It affords me pleasure to state that I have been personally acquainted with Mr. J. H. Lehman, a member of the firm of Lehman & McIntosh, for about ten years, the larger part of which he was a near neighbor of mine and during which period I saw him almost daily. I have had lots of transactions with him since that time, both personal and in a business way, all of which have proven beyond any doubt to me that he is a gentleman in all respects and an excellent accountant.

I would not hesitate at any time to state in addition to my above statements that I have never heard the least criticism by anyone, either as to his personal or moral standing, or as to his business ability as a certified public accountant. Yours very truly, Thos. Bowron.

20 **Exhibit "E" to Bill.**

EXHIBIT "E."

Traders National Bank, Birmingham, Ala.

December Fifth, 1921.

The State Board of Public Accountancy, Montgomery, Ala.

DEAR SIR: We take pleasure in saying we have known Mr. J. H. Lehman, of Birmingham, for a number of years, during which time we have had numerous transactions with him. He has also done work for customers of ours. And our observations of and experience with Mr. Lehman lead us to believe that he is a man of character and integrity. Very truly yours, Jno. H. Frye, President. JHF—G.

21 **Exhibit "F" to Bill.**

EXHIBIT "F."

R. D. Burnett Cigar Co., Birmingham, Ala.

Dec. 5, 1921.

The State Board of Public Accountancy, Montgomery, Ala.

GENTLEMEN: I- has been my pleasure to know Mr. J. H. Lehman for a great many years both in a personal, and business way and to have employed him for the auditing of the books of various enterprises in which I am interested and to use his counsel and advise in matters of importance to me.

I wish to say that I consider Mr. Lehman a most capable man in his profession, a man of known honesty and integrity, and worthy, in my opinion, of the trust and friendship of anyone that takes him into their confidence. Yours very truly, R. D. Burnett. RDB—R.

22 **Exhibit "G" to Bill.**

EXHIBIT "G."

Louis Saks Clothing Co., Birmingham, Ala.

Dec. 5th, 1921.

The State Board of Public Accountancy, Montgomery, Ala.

GENTLEMEN: We have known Mr. J. H. Lehman a great many years and for the past few years have employed him as our accountant for the purpose of auditing our books, and preparing our Federal tax returns. We consider Mr. Lehman a thorough and efficient accountant, and his work of the hightest character. Our reports

have been examined by the Government and the work of Mr. Lehman received exceptionally favorable comment.

Knowing Mr. Lehman as we do for a great many years we wish to say that his reputation is above reproach and his record of honesty and integrity has never been questioned, and he is held by us in the highest estem. Respectfully, Louis Saks.

23 **Exhibit "H" to Bill.**

EXHIBIT "H."

Adams Drug Company, Birmingham, Ala.

December 5th, 1921.

The State Board of Public Accountancy, Montgomery, Ala.

DEAR SIRS: I have known Mr. J. H. Lehmann for a number of years, during which time he has done a great deal of work for companies in which I am interested. My observation of Mr. Lehmann has always convinced me that he was a capable accountant and a man of the highest integrity and character. Respectfully, W. J. Adams.

Filed in office 25 day of Jan., 1922. Harris Gunter, Register.

24 In the Circuit Court of Montgomery County. In Equity.

[Title omitted.]

Order Fixing Bond, etc.

Upon complainant entering into bond in the sum of $250.00, conditioned and payable as required by law, said bond to be approved by the Register, it is ordered that a temporary restraining order issue as prayed for in the bill, returnable Feb. 9, 1922, at 12 o'clock, noon.

Done this Jan. 25, 1922. Walter B. Jones, Circuit Judge.

25 **Injunction Bond.**

[Filed Jan. 25, 1922.]

THE STATE OF ALABAMA,
Montgomery County:

Injunction Bond.

Know all Men by these Presents, That we, J. Harrod Lehmann as principal and National Surety Co., as surety, are held and firmly bound unto State Board of Public Accountancy, and Mayer W. Aldridge, George T. Rosson and James S. Edson, Esquires, and J. F. Kastner and Francis B. Latady, Esquires, in the sum of Two Hundred

and Fifty and 00/100 Dollars, for the payment of which we bind ourselves and our representatives.

The condition of the above obligation is such, That whereas, the said J. Harrod Lehmann has filed his bill of complaint in equity, in the Circuit Court of Montgomery County, and has obtained thereon an order for the issuance of an injunction from the Honorable Walter B. Jones, Judge, to enjoin State Board of Public Accountancy, Mayer W. Aldridge, George T. Rosson, James S. Edson, J. F. Kastner and Francis B. Latady, from proceeding to hear or attempting to conduct and hear the trial of said J. Harrod Lehmann upon written charges preferred by said J. F. Kastner and from making or entering any order revoking or attempting to revoke the certificate of certified public accountant heretofore issued said J. Harrod Lehmann or from interfering in any way with the practice of his profession or the performance of his work as Certific*ate* Public Accountant by said J. Harrod Lehmann; and the said J. F. Kastner and Francis B. Latady from preferring or prosecuting before the State Board of Public Accountancy charges against the said J. Harrod Lehmann.

Now if the said J. Harrod Lehmann and his said sureties, or either of them, shall pay State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner and Francis B. Latady, all damages and costs which any person may sustain by the suing out of such injunction, if the same is dissolved, then this obligation to be void; otherwise to remain in full force.

Witness our hands and seals this 25th day of January, 1922. J. Harrod Lehman: (L. S.) National Surety Co. L. A. Porter, Res'd't Vice Pres't. (L. S.) Attest: Leslie Porter, Res'd't Ass't —. (Seal.)

Approved Jan. 25, 1922. Harris Gunter, Register.

[File endorsement omitted.]

26 **Writ of Injunction.**

Writ of Injunction.

THE STATE OF ALABAMA,
Montgomery County:

To the State Board of Public Accountancy, Mayer W. Aldridge, Esquire, James S. Edson, Esquire, George T. Rosson, Esquire, J. F. Kastner, Esquire, and Francis B. Latady, Esquire:

Whereas, one J. Harrod Lehmann has exhibited his bill of complaint in equity, in the Circuit Court of Montgomery County, and has obtained from the Honorable Walter B. Jones, Judge of said Court, an order for the issuance of an Injunction to enjoin you as hereinafter mentioned; and whereas, the said J. Harrod Lehmann has, in accordance with said order, entered into bond, with security, in the sum *to* Two Hundred and Fifty and 00/100 ($250.00) Dol-

lars, payable to State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner and Francis B. Latady, and approved by the Register of said Court, and conditioned according to law.

Now, therefore, you, the said State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner, and Francis B. Latady, are hereby enjoined from conducting a hearing or trial upon written charges preferred by J. F. Kastner, and prosecuted by said J. F. Kastner or Francis B. Latady, Esquires, against J. H. Lehmann, seeking to revoke the certificate of certified public accountant heretofore issued to the said J. Harrod Lehmann, and you are hereby further enjoined and restrained from conducting any such hearing or trial against the said J. Harrod Lehmann on said charges under Section 7 of an Act to create a State Board, etc., approved February 17th, 1919, and you are hereby enjoined and restrained and prohibited from revoking or cancelling the said certificate of said J. Harrod Lehmann, or from conducting any trial or hearing on said written charges against the said J. Harrod Lehman, or from interfering in any way with the business or clients of said J. Harrod Lehmann upon said written charges, unless and until you appear before the Honorable Walter B. Jones, as Judge of the Circuit Court of Montgomery County, in Equity, at the place of holding said Circuit Court in Montgomery, Montgomery County, Alabama, on February 9, 1922, at twelve o'clock noon, and then and there show cause why this order should not be made permanent, and this Injunction you are required to obey under the penalties of the law, until the further order of this Court.

Witness my hand, this 25th day of January, 1922. Harris Gunter, Register.

27 To the Sheriff of Montgomery County:

You are hereby commanded to execute this writ, and return the same with your endorsement thereon, to this Court, with all convenient speed.

Witness my hand, this 25th day of January, 1922. Harris Gunter, Register.

Executed by serving a copy of the within on The State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner, and Francis B. Latady, this 26th day of January, 1922. J. L. Scogin, Sheriff. N. H. Jones, D. S.

28 **Motion to Dissolve Injunction.**

[Filed Feb. 8, 1922.]

THE STATE OF ALABAMA,
Montgomery County:

In the Circuit Court of Montgomery County, Alabama.

[Title omitted.]

Motion to Dissolve and Discharge Injunction or Restraining Order.

Come the respondents through their attorney, J. J. Mayfield, and separately and severally moves the court to dissolve the temporary or interlocutory injunction or restraining order, heretofore issued by this Honorable Court on the ground and for the reason that there is no equity in the bill. J. J. Mayfield, Attorney for Respondents

[File endorsement omitted.]

29 **Demurrer to Bill.**

[Filed Feb. 8, 1922.]

THE STATE OF ALABAMA,
Montgomery County:

In the Circuit Court of Montgomery County, Alabama.

[Title omitted.]

Demurrers to the Bill.

Come the respondents, George T. Rosson, Mayer W. Aldridge, and James S. Edson, and the Alabama State Board of Accountancy and separately and severally demur to the original bill of complaint filed against them in this case; and for grounds of demurrer assign the following:

First. There is no equity in the bill.

Second. It affirmatively appears on the face of the bill of complaint that there is no equity for that the respondent, Alabama State Board of Accountancy, is an arm or an agency of the government of the State of Alabama, and that it is not liable to be sued by the complainant as is attempted to be done in this case.

Third. The bill affirmatively shows on its face that the respondents are each officers or agents of the government of the State of Alabama, and the bill seeks to enjoin them from the discharge of the duties imposed upon them by law, and seeks to enjoin them from exercising a discretion which the laws of the State of Alabama

have vested in them, all of which affirmatively appears from the allegations of the bill, and, therefore, affirmatively shows that there is no equity in the bill. J. J. Mayfield, Attorney for respondents.

[File endorsement omitted.]

30 In the Circuit Court of Montgomery County. In Equity.

[Title omitted.]

Decree Sustaining Demurrer, etc.

[Filed Mar. 31, 1922.]

This matter coming on to be heard, was submitted to the Court upon the demurrer of the respondents, to the Bill, and upon the motion of respondents, separately and severally, to dissolve the temporary restraining order granted in this cause on January 25, 1922, and the matter having been argued to the Court and being now understood by the Court, the Court is of opinion that the demurrer to the Bill is well taken and should be sustained; and that the motion of respondents to dissolve the temporary restraining order should be granted.

It is therefore ordered, adjudged and decreed That the demurrer of the respondents to the Bill filed February 8, 1922, be and the same is hereby sustained.

It is further ordered, adjudged and decreed by the Court that the motion of respondents to dissolve the temporary restraining order heretofore issued in this cause be and the same is hereby granted and said restraining order is hereby dissolved.

Upon motion of the complainant in this cause, and it appearing to the Court that this case is a proper one for the reinstatement of the injunction pending the appeal to the Supreme Court of Alabama, notice of which is this day given, it is ordered, adjudged and decreed that upon complainant executing bond in the sum of Three Hundred Dollars, conditioned well and truly to pay to the respondents all such costs and damages as may be suffered by the said respondents by reason of the reinstatement of said injunction pending said appeal, and upon approval of said bond by the Register said injunction is hereby reinstated in full force and effect.

Done this March 31, 1922. Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

31 **Security for Costs of Appeal.**

[Filed Apr. 6, 1922.]

THE STATE OF ALABAMA,
Montgomery County:

Circuit Court of Montgomery County. In Equity.

[Title omitted.]

Security for Costs of Appeal to Supreme Court.

We hereby acknowledge ourselves security for costs of appeal to Supreme Court in the above case, returnable to the present term thereof. And for the payment of the above bond, we hereby waive our right of exemption to personal property under the Constitution and Laws of the State of Alabama. J. Harrod Lehmann. (L. S.) Fidelity and Deposit Company of Maryland, by David S. Meyer, Attorney in Fact. (L. S.)

Taken and approved this the 6 day of April, 1922. Harris Gunter, Register.

[File endorsement omitted.]

32 **Bond for Reinstatement of Injunction.**

[Filed Apr. 6, 1922.]

THE STATE OF ALABAMA,
County of Montgomery:

Know all men by these presents: That we, J. Harrod Lehmann, as principal, and Fidelity and Deposit Company of Maryland, and —— ——, as surety, are held and firmly bound unto the Alabama State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner, and Francis B. Latady in the full and just sum of Three Hundred ($300.00) Dollars, for the payment of which we bind ourselves, our successors and assigne-s, forever.

In witness whereof, we have hereunto set our hands and seals this the 4th day of April, 1922.

The condition of the above obligation is such, that, whereas, heretofore on, to wit, the 31st day of March, 1922, a decree was rendered in the Circuit Court of Montgomery County, in Equity, by the Honorable Walter B. Jones, Judge, in a cause therein pending, wherein J. Harrod Lehmann was complainant, and the Alabama State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner, and Francis B. Latady were

defendants, numbered 2483, and by the terms of said decree the injunction that had been granted in said cause was dissolved, and the demurrer of respondents to the Bill filed February 8, 1922, was sustained; and

Whereas, by the terms of said decree, it was provided that said injunction might be reinstated on appeal, upon the execution by the Complainant of this bond; and

Whereas, the said J. Harrod Lehmann, complainant as aforesaid, has this day taken his appeal to the Supreme Court of Alabama from the decree rendered in said cause, and desires to reinstate said injunction pending said appeal.

Now, therefore, if the said J. Harrod Lehmann, as principal, or the said Fidelity and Deposit Company of Maryland, as surety, shall well and truly pay all such costs and damages as may be suffered by the said Alabama State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner and Francis B. Latady by reason of the reinstatement of said injunction pending said appeal, then this obligation shall be void, otherwise to remain in full force and effect. J. Harrod Lehmann. (Seal.) Fidelity and Deposit Company of Maryland, by David S. Meyer, Attorney in Fact. (Seal.)

Taken and Approved this 6 day of April, 1922. Harris Gunter, Register.

[File endorsement omitted.]

33 In the Circuit Court of Montgomery County. In Equity.

[Title omitted.]

Notice of Appeal.

To the State Board of Public Accountancy, Mayer W. Aldridge, James S. Edson, George T. Rosson, J. F. Kastner, Francis B. Latady:

Whereas, complainant has prayed for and obtained an appeal to the Supreme Court of the State of Alabama, from the decree rendered in the above stated cause by the Circuit Court of Montgomery County, in Equity, on the 31st day of March, 1922, and has given security for the costs of said appeal; said appeal being made returnable to the first Monday in May, 1922.

Now, therefore, you are hereby cited to appear at the Supreme Court of the State of Alabama, on the first Monday in May, 1922, and defend on said appeal, if you shall think proper so to do.

Witness my hand this 6th day of April, 1922. Harris Gunter, Register.

Executed by serving a copy of the within on Judge J. J. Mayfield, Atty. for State Board of Public Accountancy. Apr. 7th, 1922. J. L. Scogin, Sheriff Montgomery County, by N. H. Jones, D. S.

Executed by serving a copy of the within on Francis B. Latady, this the 8 day of April, 1922. J. C. Hartsfield, Sheriff Jefferson County, by T. P. Patterson, D. S.

34 STATE OF ALABAMA,
Montgomery County:

In the Circuit Court of Montgomery County. In Equity.

[Title omitted.]

Certificate of Appeal.

I, Harris Gunter, Register of the Circuit Court of Montgomery County, Alabama, in Equity, do hereby certify that an appeal was taken in the above stated cause on the 6th day of April, 1922, by the Complainant from a decree rendered in said cause on the 31st day of March, 1922, sustaining the demurrers to the Bill of Complaint, etc., to the Supreme Court of the State of Alabama, and that said appeal is made returnable to the first Monday in May, 1922; I further certify that J. Harrod Lehmann and Fidelity and Deposit Company of Maryland by David S. Meyer, Attorney in Fact, are the sureties for the costs of said appeal.

Given under my hand and seal of office, this the 6th day of April, 1922. Harris Gunter, Register of the Circuit Court of Montgomery County, in Equity. (Seal.)

35 **Certificate of Record.**

STATE OF ALABAMA,
Montgomery County:

I, Harris Gunter, Register of the Circuit Court of Montgomery County, Alabama, in Equity, do hereby certify that the foregoing pages, numbered from one to —, both inclusive, contain a full, true and correct transcript of all the proceedings in the case of J. Harrod Lehmann v. Alabama State Board of Public Accountancy, et als., cause No. 3483 in the Circuit Court of Montgomery County, in Equity, as the same appears of record and on file in this office.

Given under my hand and seal of office, this the 18 day of April, 1922. Harris Gunter, Register of the Circuit Court of Montgomery County, in Equity.

36 In the Supreme Court of Alabama.

[Title omitted.]

Assignment of Errors.

The Court below erred to the great injury and prejudice of Appellant as follows:

(1) In sustaining the demurrer of the respondents to the complainant's Bill in the decree rendered on the 31st day of March, 1922, set out on page 28 of the record.

(2) In sustaining the motion of the respondents to dissolve the temporary restraining order theretofore issued in said cause, and in dissolving said restraining order as shown in the decree of the court rendered on the 31st day of March, 1922, set out on page 28 of the record.

(3) In making and entering the decree and judgment in said cause sustaining demurrers to complainant's bill, and dissolving the temporary restraining order as set out in the decree and judgment shown on page 28 of the record.

(4) In making and entering the decree and judgment set out and shown on page 28 of the record.

Erle Pettus, Attorney for Appellant.

37 [*Orders and Judgments of the Supreme Court of Alabama.*]

[Minutes 73, October Term, 1921, Supreme Court of Alabama, pp. 316-317.]

Supreme Court, Tuesday, May 9th, 1922.

The Court met pursuant to adjournment.
Present: Chief Justice Anderson and Associate Justices McClellan, Somerville, and Thomas.

3 Div., Montgomery Circuit Court.

567.

[Title omitted.]

Argument and Submission.

Come the parties by attorneys, and argue and submit this cause for decision.

The Court adjourned until Wednesday, May 10th, 1922, at 10 o'clock A. M.

[Ib., pp. 416-422.]

Supreme Court, Thursday, June 29th, 1922.

The Court met pursuant to adjournment.
Present: All the Justices.

* * * * * * *

3 Div., Montgomery Circuit Court.

567.

[Title omitted.]

Judgment.

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the Appellant, and Fidelity & Deposit Company of Maryland, surety on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

* * * * * * *

The Court adjourned until Friday, June 30th, 1922, at 10 o'clock A. M.

[Minutes 74, October Term, 1922, Supreme Court of Alabama, pp. 2, 10.]

Supreme Court, Thursday, October 12th, 1922.

The Court met pursuant to adjournment.
Present: All the Justices.

* * * * * * *

3 Div., Montgomery Circuit Court.

567.

[Title omitted.]

Order Overruling Petition for Rehearing.

Come the parties by attorneys, and the application for a rehearing in this cause filed by the appellant on July 14th, 1922, being duly examined and understood by the Court, it is considered that said application be and the same is hereby overruled.

39 THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, 3 Div., October Term, 1921-22.

567.

[Title omitted.]

Appeal from Montgomery Circuit Court. (In Equity.)

Per Curiam Opinion.

Per Curiam: Appellant is a certified public accountant by virtue of an Act of the Legislature approved February 17, 1919, [Gen. Acts 1919, p. 24, et seq.]. He seeks to enjoin the appellee board from hearing charges preferred against him by other public accountants, and to prevent appellee from revoking or cancelling his certificate as a certified public accountant, or from revoking and cancelling the registration of such certificate. The bill also seeks to enjoin two other accountants, J. A. Kastner and Francis B. Latady, from preferring or prosecuting charges against the appellant as a certified public accountant. On the filing of the bill the trial court issued a temporary injunction. The respondents filed demurrers to the bill for want of equity, and a motion to dissolve the temporary injunction, and from decrees sustain-g the demurrer and dissolving the temporary writ the complainant prosecutes this appeal.

40 The sole equitable relief sought is injunction. The only personal or property right, with which the complainant claims the respondents are attempting to interfere, is the statutory right conferred upon him by the respondent board, acting under and by virtue of the Act of the Legislature above referred to. The statute which confers this right upon the complainant also provides how it may be taken away. No constitutional, natural or inalienable right of the complainant is threatened to be interfered with. If the legislature had the power to confer this right upon the complainant, it had the right and power to take it away, or to prescribe the terms and conditions upon which it may be forfeited.

A court of equity will not allow the complainant to enjoy the benefits or privileges conferred by that statute, without also bearing the burdens and inconveniences imposed by it. Appellant's contention overlooks the fact that the sole wrong of which he complains is a threatened disturbance of a right or privilege conferred by statute.

The main contention of appellant is that section 7 of the Act in question is unconstitutional and void, first, because it offends against section 45 of the Constitution, in that the provisions of section 7 are not germane to the title of the bill; and, second, that it is void for indefiniteness and uncertainty as to the grounds or causes which

will justify the revocation or cancellation of certificates or licenses issued under or by virtue of the Act.

There is no merit in either of these contentions, as Justice Thomas, in his dissenting opinion, has aptly pointed out.

If it could be conceded, however, that section 7 of the Act providing for revocation or cancellation of the certificates when once issued is void, because of indefiniteness and uncertainty as to its provisions, then the whole Act, of course, would fall; because the court could not say that the legislature would have passed the bill without some provision for revoking or cancelling a certificate when once issued. The title of the Act was to regulate the practice of public accountancy by creating a State Board of Public Accountancy. Very clearly, the practice of public accountancy cannot be properly regulated without some provisions for revoking or cancelling a license or certificate when once issued. We are not willing
41 to hold that the legislature would have provided for issuing a certificate or license to practice public accountancy with no provision whatever for revoking, cancelling or terminating such license or certificate; and if section 7 should be held to be void, then there would be no authority to revoke or cancel the certificate when once issued.

We do not understand that Mr. Justice Thomas, in his dissenting opinion, differs from the majority in this holding, but that he concurs to this extent. So, if the Act in question be unconstitutional, then the certificate which appellant holds and seeks to protect is absolutely void, and his right thereto is worthless; and the board, having issued a void certificate, would very clearly have a right to cancel or revoke it.

If the Act in question be void, as contended by appellant, then, of course, there is no equity in the bill.

However, if the Act in question be valid, still the bill is without equity, since neither the trial court nor this Court can know in advance of the hearing of the charge preferred that the board will revoke or cancel appellant's certificate or license. The statements in the allegations and prayer of the bill, that the board will revoke or cancel the certificate unless enjoined or restrained by the Court, is of necessity not only a mere conclusion, but an unwarranted apprehension of the pleader. So far as the courts can know from the allegations of the bill, the board may decline to revoke or cancel appellant's certificate, and may allow him to continue to practice his profession thereunder. Hence, there is no equity in the bill, for the reason that a court of equity will not enjoin a board or commission vested with quasi-judicial and administrative authority from acting as to matters within their jurisdiction and power, merely because it is apprehended that they may decide erroneously.

This is not a bill to restore to complainant his right to a certificate or license of which he has been unlawfully deprived, nor to compel the issuance to him of a license or certificate to which he is entitled; but is is, essentially, a bill to prevent the hearing of charges preferred against complainant.

42 The rights of complainant in this case are unlike the rights of a physician, surgeon, dentist, lawyer, or school teacher to practice their callings or professions. Under the law, they cannot practice without a certificate or license; and when their license or certificate is revoked they are thereby prevented from practicing their profession at all. In the case of accountants, however, this is not true. They are not required to obtain a certificate or license to practice their calling, but obtaining the license or certificate is purely voluntary on their part. Nor does the revocation or cancellation of the license or certificate, when once issued, bar or deprive them from further or longer practicing their chosen calling. The license in their case is but a certificate of the board issuing it as to their competency and fitness. It is not at all a requisite to the practice of their calling, though it may be true, and doubtless is, that the certificate of license, being an authoritative recommendation or certification of a legally constituted board, as to efficiency and qualifications, has some value. The qualifications an applicant should have in order to entitle him to hold a certificate and to the registration of that certificate as a certified public accountant, the law has wisely left to the judgment of a board of experienced accountants. Likewise, in a large measure, the law has placed the discretion in the same experienced accountants, who constitute the board, to determine when a license or certificate once issued can be revoked or cancelled. The law, however, does contain the necessary provision that no license or certificate shall be revoked or cancelled unless written notice shall have been mailed to the holder thereof twenty days before any hearing thereon, stating the cause for such contemplated action, and appointing a day for a full hearing thereon by the board.

The bill in this case shows that the statutory notice was given and that the hearing was continued so as to give the complainant further time to prepare for his defense. But instead of appearing and defending, he seeks to have a court of equity enjoin the board from doing what the law has authorized it to do. Hence, there can be no equity in such a bill, and none of the authorities relied upon by appellant, or cited by Mr. Justice Thomas in his dissenting opinion, can be properly considered as authority to the contrary.

43 The legislature has the undoubted power to delegate to officers, boards, or commissioners of its own creation and appointment, certain governmental powers for the more efficient administration of the law, subject, however, to certain limitations of the Constitution.—Parke v. Bradley, 204 Ala. 455; Railroad Commission v. A. N. Railway Co., 182 Ala. 357.

Courts of equity rarely interfere by injunction with proceedings and determinations of inferior boards, commissions or tribunals, which are clothed by the legislature with special governmental powers, though such powers by quasi-judicial as well as administrative. While there are some cases in which courts of equity will grant injunctive relief against such proceedings, the instances are rare; and this is not one of these exceptional cases.—Ewing v. St. Louis, 5 Wallace (U. S.) 413; Reetz v. Michigan, 188 U. S. 505.

It is held by the Supreme Court of the United States that in creating such boards state legislatures do not exercise or confer powers not authorized by the constitutions, state or federal.

Mr. High in his valuable work on Injunctions has thus stated the law on the subject:

"It is important to observe that courts of equity do not interfere by injunction for the purpose of controlling the action of public officers constituting inferior quasi-judicial tribunals, such as boards of supervision, commissioners of highways, and the like, on matters properly pertaining to their jurisdiction, nor will they review and correct errors in the proceedings of such officers, the proper remedy, if any, being at law, by writ of certiorari."—2 High on Injunctions, p. 1324, § 1311.

It is neither necessary nor proper for this Court to now decide what remedy, if any, would be available to the appellant if his certificate or license should be improperly or illegally revoked or cancelled. The only question now before the Court is whether or not the bill contains equity, and we are of the opinion that the trial court ruled correctly in holding that it contained no equity, and in dissolving the temporary injunction or restraining order.

We do not mean to intimate from what is said above that the complainant has any remedy or that any legal right of his has been interfered with, or attempted to be interfered with. We
44 merely decide that there is no equity in the bill; that the decree of the lower court is correct, and it is accordingly affirmed.

Affirmed.

Anderson, C. J., McClellan, Sayre, Somerville, Gardner and Miller, JJ., concur.

Thomas, J., dissents.

45 **Dissenting Opinion.**

THOMAS, *J.* (dissenting): The relief sought by the bill was injunctive—to prevent the State Board of Public Accountancy from revoking or cancelling registration of complainant's certificate as a certified public accountant, under provisions of section 7 of the Act approved February 17, 1919 (Acts, p. 126)—on the ground that the provision was unconstitutional. If section 7 of the Act be offensive to organic law, the whole statute is defective, since it cannot be said that the Legislature would have so enacted without the power to revoke a certificate issued, for just cause.

Respondents moved to dissolve and discharge the restraining order on the ground that "there is no equity in the bill;" and the demurrer to the bill, aside from this general ground, rested on grounds that respondents are officers or agents of the State
46 and are sought to be enjoined from exercising a "discretion which the laws of the State of Alabama have vested in them."

Those who are eligible under the Act for a certificate and are styled Certified Public Accountants are (1) "any citizen of the United States, residing or having a place for the regular transaction of business in" this State, "being over the age of twenty-one years, of good moral character, and who have passed the required examination and shall have received from the State Board of Public Accountancy a certificate of his qualifications to practice as an expert public accountant," etc., § 1; (2) those who hold certificates as public accountants certified as issued under the laws of another state that grants a similar privilege to the certified public accountants of this State, and who are in the "discretion" of the Alabama State Board of Public Accountancy entitled and are authorized to have their certificates registered, etc., §§ 3-5; (3) those having qualifications prescribed in section 1 of the Act and exempt from examination, (*a*) "who have been at least for five years actively employed as an accountant, who shall [duly] apply in writing to the board for such certificate," and (*b*) "who have practiced for more than three consecutive years before the passage of this Act on his own account as a public accountant, and who shall [duly] apply," etc., § 6.

The business or professional advantage recognized and accorded or to be denied under the Act is that such citizen or person who does not possess the registered certificate shall not be entitled to practice as a certified public accountant in this State or hold himself out as being such "C. P. A." in the transaction of the business of a public accountant. The penalty for the violation of the provisions of the statute is that of a misdemeanor, punishable by fine and imprisonment.—§ 8. The grounds for revocation and cancellation of a certificate are "for any unprofessional conduct of the holder of
47 such certificate, or for other sufficient cause," on "written notice," etc., stating the cause, appointing a day for a full hearing; and no certificate shall be revoked until after such hearing. § 7.

It cannot be successfully maintained that the right in question is not a valuable one and will not be protected. If necessary to protect such right, injunctive process may be invoked, for one's profession is his capital.—Constitution of Alabama, Sect. 1; Hardie-Tynes Mfg. Co. v. Cruise, 189 Ala. 66; Franklin Social Club v. Phil Campbell, 204 Ala. 259; State v. Goldstein, in MS.; Hill v. Wallace, U. S. S. C. Adv. Ops. 1921-22, 527, 66 L. ed. —; Booth v. Illinois, 184 U. S. 425, 428, 46 L. Ed. 623, 626; Allgeyer v. Louisiana, 165 U. S. 578, 41 L. Ed. 832; N. Y. L. Ins. Co. v. Dodge, 246 U. S. 357; Adams v. Tanner, 244 U. S. 590. Touching the remedy, constitutional gaurranties are Section 6, containing the expression, "nor be deprived of life, liberty or property, except by due process of law", and, §7, "that no person shall be accused or arrested, or detained, except in cases ascertained by law, and according to the form which the same has prescribed; and no person shall be punished but by virtue of a law established and promulgated prior to the offense and legally applied." State and Federal Constitutions contain like provisions that no ex post facto law shall be passed.—U. S. Const. Sect. 9 (3); Const. Ala.

Sect. 22. The Federal cases are that the ex post facto effect of a law cannot be evaded by giving a civil form to that which is essentially criminal. For example, in Cummings v. Missouri, 71 U. S. 277, 18 L. Ed. 356, was construed the effect of the test oath imposed by the Constitution of Missouri upon priests and ministers of religion; and Burgess v. Salmon, 97 U. S. 381, 385, 24 L. Ed. 1104, 1106, dealt with an Act of Congress increasing the duty on tobacco, suit for recovery of increased duty by statute not of force at the time the act was done. If, therefore, a statute have or be given a construcion that would deprive a citizen of a natural or property right, or subject him to punishment as a crime, for past misconduct, it
48 would offend such provisions of our Constitutions. An interesting discussion of retroactive statutes is contained in Barrington v. Barrington, 200 Ala. 315, 316.

The declaration is made that the Legislature of a state may enact a law that one who has been convicted of a crime shall no longer engage in the practice of medicine, and m-y require good character as a qualification for the conduct of that profession, and not offend as an additional punishment for past offenses as an ex post facto law.—Hawker v. People, (N. Y.), 170 U. S. 189, 42 L. Ed. 1002. This power of a reasonable regulation of the professions or occupations, where the services were to be rendered the public, is justified under the police power of government.—Gray v. Conn. 159 U. S. 74, 40 L. Ed. 80; McNaughton v. Johnson, 242 U. S. 344, 349, 61 L. Ed. 352, 356; Dent v. W. Va., 129 U. S. 114, 32 L. Ed. 623; Meffert v. Packer, 195 U. S. 625; Smith v. Texas, 233 U. S. 630, 636, 58 L. Ed. 1129, 1132; Reetz v. Mich. 188 U. S. 505, 47 L. Ed. 563; Watson v. Maryland, 218 U. S. 173, 54 L. Ed. 987; Re Lockwood, 154 U. S. 116, 38 L. Ed. 929; Comm. v. Goodrich, 13 Allen (Mass.) 546; Yeadon v. White, 36 Pa. Sup. Ct. 260, 362; State v. Rice 115 Md. 317; Wyeth v. Board of Health, 200 Mass. 474; People v. Ringe, 197 N. Y. 143; Chenoweth v. State Board, 51 L. R. A. (N. S.) 958 and notes; Green v. Blanchard, 5 A. L. R. 84; State v. Goldstein, in ms. In the exercise of this power, the prohibition or test contained in a statute should be enacted with reference to that object as not unduly to "interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."—Smith v. Texas, supra; Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385; N. C. & St. L. v. Alabama, 128 U. S. 96, 32 L. Ed. 352; Smith v. State, 124 U. S. 465, 31 L. Ed. 508, 513.

In Dent v. West Virginia, supra, was construed a statute providing that no one except licensed physicians should be allowed to practice medicine and that licenses should be issued by the State Board of Health only to those who were graduates of a reputable medi-
49 cal college, or who had practiced medicine continuously for ten years, or those who were found upon examination to be qualified to practice; discussing the test of (*a*) competency or (*b*) conditions on which the licenses were issued by the State Board of Health,—held, ten years' experience accepted as proof of fitness was reasonable; that such experience was not made the sole test,, in that the privilege of practicing that profession was attainable by all others

who produced a diploma from a reputable medical college, or stood the required examination showing that they were qualified for the performance of the duties of the profession as affecting those of the general public they might be called upon to serve.—Smith v. Texas, supra; McNaughton v. Johnson, supra; Reetz v. Michigan, supra. Mr. Justice Lamar said of state statutes that "None of the cases sustains the proposition that, under the power to secure the public safety, a privileged class can be created and be then given a monopoly of the right to work in a special or favored position"; that a statute having such effect "would shut the door, without a hearing, upon many persons and classes of persons who were competent to serve, and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves."—Smith v. Texas, supra.

Under the foregoing established rules of statutory enactments, under our dual system of government, and the prohibitions and tests permitted, when applied to the instant statute, the tests and prohibitions contained therein are with reference to the object of the enactment and do not unduly interfere with the private business so regulated: provided no unusual or unnecessary restrictions are imposed by the Board upon such lawful occupation or profession in defining "unprofessional conduct" or "sufficient cause" for revocation of a certificate duly issued and registered. It must follow that if the tests and prohibitions that may be contained in any statute as to the original issue of a certificate and registration thereof, are limited
50 to the extent of the constitutional inhibitions we have indicated after the issue and registry of such certificate, the authority and right of revocation and cancellation of registration is likewise restrained or limited by the same provisions of the organic law.

That all courts shall be open, and that every person, for any injury done him in his lands, goods, person or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay, are prescriptions of Section 13 of the Constitution of Alabama, given application in Hardie-Tynes Mfg. Co. v. Cruise, supra, and Montgomery v. Kelly, 142 Ala. 552, where there was an attempt at arbitrary or unlawful restraint on the conduct of business of citizens. The principle that no man shall be deprived of his liberty or property except by the law of the land is said to be more ancient than written constitutions, "and breathes so palpably of exact justice that it needs no formulation in the organic law."—State v. Bush, 12 Ala. App. 309. From such applications of justice and law come the decisions recognizing that injunctive aid will be extended in a proper case, in Brown v. Birmingham, 140 Ala. 590, 601, and the rule extended in Board of Comm'rs. of Mobile v. Orr, 181 Ala. 308, and applied in Hardie-Tynes Mfg. Co. v. Cruise, 189 Ala. 66, 81. See, also, Franklin Social Club v. Phil Campbell, supra; Harris v. Barrett, 89 South. 717. So, of the Federal cases, Dobbins v. Los Angeles, 195 U. S. 223, 25 Sup. Ct. Rep. 18, 49 L. Ed. 169; Yick Wo. v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064, 30 L. Ed. 220; Butchers' Union, &c. Co. v. Cres-

cent City, &c. Co., 111 U. S. 746; Lawton v. Steele, supra. The averments of the bill show a necessity for invoking injunctive relief to prevent the infliction upon complainant of humiliation or punishment by revocation and cancellation of his certificate as a Certified Public Accountant, if the authority for the proposed action of the Board against the complainant rests alone on the provisions
51 of section 7 of the Act, unaided by the proper rules and regulations necessary and appropriate for the administration and enforcement of the right of the Board to declare "unprofessional conduct," "sufficient cause" for revocation. Without such previous action of the Board defining "unprofessional conduct" or "other sufficient cause" to revoke a license, unfavorable action to complainant by the Board would humiliate and punish him greater than if he had been convicted for a misdemeanor. Under such indefinite declaration of acts sufficient to warrant revocation, complainant's trial, averred to be based partly upon past acts as being unprofessional conduct or sufficient cause for the revocation of his license, under such supposed authority of law, though it might eventuate in discharge, would materially tend to destroy the rights of the complainant before the public whom he would serve unembarrassed in the practice of his profession. This unquestioned confidence as a "certified public accountant" will be held to exist and be unaffected by any action of the Board in the absence of theretofore declared causes for revocation by the Board. His right to be so unquestioned and interfered with in the practice of his profession under the law stands on the same basis as important property rights made the subject of injunctive protection and relief by courts of equity. The Board must first declare just and reasonable causes that are sufficient for revocation and cancellation of a license before condemnation and punishment may follow in its revocation and prosecution for his pursuit of his profession in its absence.—Hardie-Tynes Mfg. Co. v. Cruise, supra; Mobile Comm'rs v. Orr, supra.

Appellant challenges section 7 as unconstitutional on several grounds that should be more specifically treated. We may say that the powers contained are cognate to the title of the act, and not offensive to section 45 of the Constitution. Its indefinite provisions in section 7 for discretion given the Board to declare causes for
52 revocation—"for any unprofessional conduct of the holder of such certificate, or for other sufficient cause"—are more difficult of reconciliation with the line of State and Federal authorities. Montgomery v. West, 149 Ala. 311; Cooke v. Loper, 151 Ala. 546; B. R. L. & P. Co. v. Kyser, 203 Ala. 121; Czarra v. Board, &c., 25 App. Cas. D. C. 443; U. S. v. Capital Tract. Co., 34 App. Cas. D. C. 592; and this power of the Board is subject to limitations long recognized by the courts, since the Board is an agency of government and not an arm thereof, in the sense in which a municipality and a county is part of the government of the State (Hill v. Moody, in MS.), and may no more exercise arbitrary authority than such municipality. To such administrative agent may be given the power of the right exercise of "legislative descretion," merely, and not the

power of legislation.—State ex rel. Smith v. Justice, 200 Ala. 483; Johnson v. Craft, 205 Ala. 386, 407; Parke v. Bradley, 204 Ala. 455; Railroad Comm. v. Rwy. Co., 182 Ala. 357; Fox v. McDonald, 101 Ala. 51. In Parke v. Bradley, supra, the holding was that the legislature may constitute the medical association of the State the board of health of the State, and the county medical associations, in affiliation with such State association and board, boards of health for their respective counties, although the members and officers of such associations were and are chosen by the associations themselves, and even though the association of the State be considered a private corporation; that the implied constitutional limitation against the delegation of the lawmaking power was not intended to prevent legislatures from authorizing their own appointed agencies to make minor rules and regulations necessary and appropriate for the administration and enforcement of the general laws of the State as affecting the public health.

In the delegation of this power the legislature must be held authorized to delegate to the State Board of Public Accountancy the power to reasonably declare what acts of one holding a certificate and registration under the instant statute constituted "unpro-
53 fessional conduct" or what causes were held by such Board to be sufficient for revocation and cancellation, provided such conduct or acts declared as unprofessional and sufficient for revocation have a reasonable and proper regard and reference to the business or vocation of a certified public accountant, and not unreasonably to interfere with the pursuit of such private business or vocation by the imposition of unusual, unnecessary and unreasonable restriction thereon; and provided that unprofessional conduct and causes declared sufficient shall, for revocation and cancellation be not given retroactive and ex post facto effect and punishment. Such power specifically averred in the bill was never exercised by the Board; no code of ethics or standard of professional conduct is averred to have been adopted or promulgated by the Board or in any way defined so as to inform holders of certificates whether their conduct is in conformity therewith and so to enable complainant to judge his conduct as a certified public accountant, and as giving cause for the cancellation of his certificate or prevent his conviction after reasonable notice and a full hearing by that Board. They may not reserve to it, as a mere governmental agency, arbitrary power to blame or condemn according to the unrestrained will of the members who may constitute the personnel of the Board from time to time. Such Board must act within reasonable limitations the exercise of descretion; and the conduct of the holders of certificates, before they may punish, adjudged according to declared and pre-determined law, and not by way of the exercise of the volition or will of the members who may from time to time compose the Board, and as it may affect the several individuals made the subject of the exercise of such delegated authority.—Yick Wo v. Hopkins, supra.

In Mott v. Georgia State Board of Examiners, &c., 95 S. E. 867,

869, 870, the authority of the board was questioned by mandamus to compel the issuance of a certificate to petitioner, who had complied with the requirements of the statute. The writ requiring the issue of certificate of registration was granted by the Su-
54 preme Court, notwithstanding statutory provision for an appeal. The refusal of the Georgia Board to issue the certificate was based upon provisions contained in section 7 of that statute, providing:

"The state board of examiners * * * shall refuse to issue the certificate * * * to any person who shall have been guilty of *grossly unprofessional and dishonest conduct.*"

Of the sufficiency of such legislative test or standard, Mr. Justice Gilbert said:

"* * * This portion of the act is clearly unconstitutional. 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action or purely personal and arbitrary power.' Yick Wo v. Hopkins, 118 U. S. 356-369, 6 Sup. Ct. 1064, 1071 (30 L. Ed. 220). Under the alleged authority of the act in question the certificate of registration was denied by the board without notice or hearing, and only after repeated inquiries was petitioner able to ascertain what judgment had been passed, and the basis therefor. Although he had complied with every requirement of the law, his certificate was refused on the ground that he had been guilty of 'grossly unprofessional and dishonest conduct,' in that he had 'made extravagant claims as to his skill.' * * * The provision in the act for an appeal to the superior court after the board has rendered judgment of condemnation is not a compliance with the mandate of the Constitution. It is not conceivable that the constitutional guaranty is satisfied when a *hearing is provided only after judgment in such a case.* To deprive one of the right to practice his profession is to subject him to humiliation, mortification, and injury, which the Constitution will not permit, except in conformity with the law of the land and on *evidence sufficient to authorize such a finding by an impartial tribunal.* To say that one may be adjudged guilty of 'grossly unprofessional and dishonest conduct,' for the reasons stated by the board in this case, is to demonstrate the arbitrary power which the act un-ertakes to lodge in the state board of optometry". (Italics ours.)

The reason given by the board in the Georgia case was that complaint had been filed against the applicant that he "made extravagant claims to his skill", and that it was the policy of the board to refuse certificates to applicants against whom "charges or complaints were made."

In the case of the State, on the relation of the Attorney General and McCullough versus Scott and others constituting the State

Board of Accountancy (182 N. C. 865 [1921]), the action was for the purpose of enjoining the members of the board from exercising their duties of examining applicants beyond the limits of the State.

It should be observed of the North Carolina statute made
55 the subject of consideration, that it contains similar provisions to that embraced in the Alabama statute for admission and revocation of the certificate of a certified public accountant; that the certificate granted by the board constituted a license to "practice as a certified public accountant" within the State. Public Laws of N. C., 1913, p. 254, § 16. In that case it is said:

"The State in the lawful exercise of its police power has created the State Board of Accountancy and required examinations of applicants to safeguard the public against incompetent accountants. Every citizen of the State is in a certain sense injured when the duties of the board are performed in such a manner as to let down the bars and lower the standards of the profession. There is an especial injury *to properly accredited members of the profession who have met the conditions imposed by law*, in the manner prescribed by law. Poor Richard says, 'He who hath a trade hath an estate.' A man's profession is his capital. The State has set standards for entrance into this profession, and those who have entered in the manner prescribed by law are entitled to the protection of the State to the extent, at least, that they shall not be unjustly discriminated against by admission of others into the profession in any other way than that prescribed by law. * * *

"In the Marshall Case, supra [Marshall v. Comm'rs, 89 N. C. 103], the court said: 'The injunctive relief sought in this action is not merely auxiliary to the principal relief demanded, but is the relief, and a perpetual injunction is demanded. To dissolve the injunction, therefore, would be practically to deny the relief sought and terminate the action. This the court will never do where it may be that possibly the plaintiff is entitled to the relief demanded. In such cases it will not determine the matter upon a preliminary hearing upon the pleading and ex parte affidavits, but it will preserve the matter intact until the action can be regularly heard upon its merits. Any other course would defeat the end to be attained by the action.'" (Italics ours.)

The statute of North Carolina and that of Alabama do not forbid the pursuit of the vocation of a public accountant without the issue and registration of a certificate; but only forbid the practice of that profession as "certified public accountant" without such certificate, for which provision is made by statute. The object or effect of our statute is that public accountants are divided into classes: (1) those who are vouched for by the State in the creation of a class of certified public accountants, limited to those members admitted to that class by the Board provided by law, the members of which class are protected in the superior right of guaranteed proficiency, by
56 its being made a misdemeanor for those not of that class to hold themselves out to the public as being of the certified class; and (2) those who are accountants without having been ad-

mitted to class 1, or accountants who, being so admitted, have lost the right of certification by revocation and cancellation of their certificates by authority of the State Board. It must follow that an arbitrary denial by the Board of a certificate and its registration as "C. P. A." and the right to practice the profession of a public accountant in the certified class without regard to qualifications—as residence, age, proficiency and character—would be offensive to the right of any citizen to practice that profession as a certified public accountant so qualified as required by law. So, also, would the arbitrary denial, under like facts and circumstances, to a citizen of the right to further practice that profession or vocation within the State, be an unlawful revocation and cancellation of his certificate.

Analogy is contained in the result announced in State v. Goldstein, in MS., and U. S. v. Cohen Groc. Co., U. S. Adv. Ops., 1920-21, p. 300, since similar provisions to those contained in the Fifth and Sixth Amendments to the Constitution of the United States are embraced in Sections six and seven of the Constitution of Alabama.

In the Cohen Case, supra, Mr. Chief Justice White declared that the Act was offensive to the guaranties and limitations contained in the Fifth and Sixth Amendments to the Constitution, for the reason that Congress may not enact laws as to delegate "legislative power to courts and juries"; to penalize "indefinite acts", and to deprive "citizens of the right to be informed of the nature and cause of accusations against them"; that under such constitutional guaranties and limitations legislation fixing prohibitions and penalties is required to embrace and declare an "ascertainable standard of guilt, fixed by Congress rather than by courts and juries", and that accused persons have a right to "be informed of the nature and
57 cause of accusations against them." Commenting upon the lack of due observance in the Lever Act of the inhibitions of the Constitution, the Chief Justice declared, as defects of that statute, that it confines the subject-matter of the investigation which it authorizes to no "element essentially inhering in the transaction as to which it provides"; that it "leaves open * * * the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." And Mr. Chief Justice Waite said of the failure of observance of the limitations in enactment of penal statutes that it would be "dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the Judicial for the Legislative Department of the Government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere, Congress is supreme and beyond the control of the courts; but if it steps outside of its constitutional limitation and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the States and the people."—U. S. v. Reese, 92 U. S. 214, 23 L. Ed,

563. This just observation has been given application by this court in Dorman v. State, 34 Ala. 216; State v. Goldstein, in MS.; Johnson v. Craft, 205 Ala. 386. So, also, was this a test recognized by the Supreme Court of the United States in passing upon State statutes in International Harvester Co. v. Ky., 234 U. S. 216, 58 L. Ed. 1284; Collins v. Ky., 234 U. S. 634, 58 L. Ed. 1510; Nash v. U. S. 229 U. S. 373, 57 L. Ed. 1232. If legislatures or Congress may not so enact as to courts and juries, they may not delegate to governmental agencies the exercise of legislative discretion of larger import
58 than that the sovereign may define and enact. The discharge of administrative or governmental function by legislative agent must, therefore, be reasonably exercised with due regard to the subject dealt with and objects to be attained, to the end that unjust and oppressive interference with the conduct of private businesses and professions be not effected through arbitrary and unreasonable restrictions.—Smith v. Texas, supra; Lawton v. Steele, supra; N. C. & St. L. v. Alabama, supra; Standard Chem. Corp. v. Waugh Corp., 14 A. L. R. 1054; Arver v. U. S., 254 U. S. 366, 62 L. Ed. 349. That is to say, under the authority reposed by the legislature in the State Board of Public Accountancy to exercise legislative descretion in the administration of delegated functions of government and the definitions of "unprofessional conduct" of a holder of a certificate that will be "sufficient cause" for revocation thereof, no greater power is given than may have been exercised under the organic law by the legislature itself.

If, in the discharge of that administrative function in the State Board for revocation and cancellation of the certificate of "Certified Public Accountants" granted by authority of law, that Board should undertake to penalize for past conduct of a registrant (which conduct should have been discovered by the Board before the issue of the certificate and from the discovery of which it was not prevented by fraud of the applicant that entered into his examination and determination of his qualification or fitness for the issue of his certificate), and give his crime and punishment a retroactive or ex post facto effect by a definition of unprofessional conduct or other sufficient cause for revocation, such retroactive application and punishment would be offensive to provisions of the respective Constitutions. Constitutional inhibitions as to State statutes unduly limiting and regulating private businesses were the subjects of discussion in Fox v. Washington, 236 U. S. 273, 59 L. Ed. 573; Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 53 L. Ed. 417; Miller v. Strahl, 239 U. S. 426; Nash v. U. S., supra; Omaechevarria v. Idaho, 246 U.
59 S. 343, 62 L. Ed. 763; Arizona Copper Co. v. Hammer, 250 U. S. 400, 53 L. Ed. 1058. Authorities defining the limitations to statutes affecting the conduct of the several professions are Meffert v. State Board of Med. Reg., supra; Dent v. W. Va., supra; Reetz v. Michigan, supra; Gray v. Conn., supra; McNaughton v. Johnson, supra; Smith v. Texas, supra; Lawton v. Steele, supra; N. C. & St. L. v. Alabama, supra; Smith v. State, supra; Watson v. State, 218 U. S. 173, 54 L. Ed. 987; Collins v. Texas, 223 U. S. 288, 56 L. Ed. 439; Hawker v. N. Y., supra.

In Czarra v. Medical Super., supra, construing an Act of Congress providing that any licensee of the medical board was subject to have his license revoked upon being found guilty of "unprofessional or dishonorable conduct," was held insufficient to inform the accused of the nature and cause of accusations against him preserved by the Sixth Amendment to the Constitution of the United States, requiring that one be informed by the indictment or information presented against him, since the fundamental requisite is that the crime or offense with which he stands charged shall be defined with reasonable precision, and that he be informed by the legislature "with reasonable precision" what acts are intended to be prohibited. This case has been followed in U. S. v. Capital Tract. Co., 34 App. Cas. D. C. 592, where a judgment was upheld quashing an information charging the Capital Traction Company with operating its cars within the District in violation of section 16 of the Act of Congress (35 Stat. L., 246, Ch. 190), that provision being that every street railroad company, shall supply and operate a "sufficient number of cars," with "proper and safe power," etc., comfortable and convenient, and so operate the same as to give expeditious passage, etc., "without crowding said cars," giving the Interstate Commerce Commission power "to make all such orders and regulations necessary to the exercise of the powers granted to it as may be reasonable and proper," providing penalties for the violation of the provisions of the section and any of said orders or regulations made by
60 said Commission. The provisions of the Sixth Amendment to the Constitution of the United States provide that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation, held violated by said provisions of the Act in the total absence of any definition of what constituted a "crowded car," an important element, said not to be left to conjecture or supplied by the court or jury. The reason given for the holding was that "the dividing line between what is lawful and unlawful cannot be left to conjecture"; that the "citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions," and citing the quotation we have given above from U. S. v. Reese, supra. The question whether or not the power of the Interstate Commerce Commission to supply by rule or regulation what the statute lacks in regard as we have indicated was propounded without answer, the court saying: "No such attempt has been made; hence the question is not before us. The judgment of the police justice sustaining the motion to quash the information is affirmed." Neither of the foregoing cases from the District of Columbia has been reviewed by the Supreme Court of the United States. Such powers discharged by legislative agents is an administrative function or discretion and can be justified only in the right to make reasonable rules to limit and regulate future conduct of those observing or coming in conflict with such rules (Whaley v. State, 168 Ala. 152; B'ham. R. L. & P. Co. v. Kyser, 203 Ala. 121), and not in the giving of retroactive or ex post facto effect thereto.

Such is the answer to the erroneous rulings of the trial court in sustaining demurrer to complainant's bill and decreeing that the motion to dissolve the temporary restraining order be dissolved.

The distinction is made between the instant case where the defendant has the right to practice his profession without arbitrary limitation or restraint—and this profession may not be wholly forbidden—and the case of State, ex rel. Crumpton v. Excise Comm., 177 Ala. 212, 237, where it is said:

61 "It is universally recognized that the act of engaging in the sale of intoxicants may be wholly forbidden, and that a license to engage in the traffic in liquors is a privilege merely, revocable at the will of the superior granting power; that there is in it no element of property right or vested interest of any kind."

There is no question of the "selection of the beneficiaries of a mere privilege" of those qualified as certified public accountants to practice that profession; but the arbitrary denial or revocation of the certificate of any member within that class involves "a matter of right" that may not be committed to the arbitrary discretion of the state board; and engaging in the business of a public accountant in its most favorable aspects may not be wholly forbidden. The right of the state to regulate certain occupations which may become unsafe or dangerous when unrestrained with a view to protect the public health and welfare, has been recognized by the Supreme Court of the United States in foregoing authorities cited and in the discussion of People of the State of N. Y. v. Van De Carr, Warden, 199 U. S., 552; 50 L. ed., 305. Yet such regulation is required to be uniform, and as we have seen, the board shall not act arbitrarily; and if the provisions of section 7 of the instant act vested in the state board arbitrary power to grant a license to one person as a certified public accountant and to refuse a license to another similarly situated, or to revoke the license of one such certified accountant and refuse to revoke the license of another similarly situated, the same would undoubtedly be invalid. Yick Wo v. Hopkins, supra; Gundling v. Chicago, 177 U. S., 183; 44 L. ed., 725, and other authorities collected in People of State of N. Y. v. Van De Carr, supra.

The trial of complainant, in the absence of a reasonable definition of the causes for revocation of certificate under the provisions of section 7 of the act, would leave such arbitrary discretion in the state board, which would authorize or be susceptible of a different application to the same facts, dependent on the one hand on who composed the members of that state board, and on the other, on who was the subject of the investigation or trial. This arbitrary power is contrary to the letter and spirit of both state and federal constitutions.

62 And to save the statute, a reasonable discretion in defining causes of revocation must be first exercised before any member may be lawfully placed on trial by the board for revocation of his license.

63 [File endorsement omitted.]

THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, 3 Div., October Term, 1921-22.

567.

[Title omitted.]

Petition for Writ of Error.

[Filed Nov. 16, 1922.]

To the Honorable John C. Anderson, Chief Justice of the Supreme Court of Alabama:

Your petitioner, J. Harrod Lehmann, respectfully sets forth and shows that the 12th day of October, 1922, the Supreme Court of the State of Alabama, sitting at Montgomery, Alabama, made and entered a final order and judgment in the above entitled cause in favor of the defendants, appellees, and against your petitioner, in which final order and decree and the proceedings had in this cause, certain errors were committed, to the prejudice of your petitioner, J. Harrod Lehmann, all of which appear in detail from assignment of error filed in this cause with this petition;

And that the said Supreme Court of the State of Alabama is the highest court of said State of Alabama in which a decision in this suit and matter could be had;

And that this suit or cause is one in which your petitioner sought to enjoin the State Board of Public Accountancy and Mayer W. Aldridge, George T. Rosson and James S. Edson, as members of said Board, from proceeding to hear or attempt to conduct and
64 hear the trial of your petitioner upon such charges preferred, and that they be enjoined and restrained from making or entering any order revoking or attempting to revoke the certificate of qualification as a certified public accountant, heretofore issued to your petitioner, or from interfering in any way, manner or character with the practice of his profession or the performance of his work by your petitioner as such certified public accountant, and J. F. Kastner and Francis B. Latady be enjoined and restrained from further preferring or prosecuting the alleged charges before the State Board of Public Accountancy against said petitioner, or from making or doing any act which would interfere with your petitioner in and about the practice of his profession or the performance of his work or the conduct of his business, or that would have the effect of alienating any of petitioner's clients; on the ground that Section 7 of an Act of the Legislature of Alabama, approved February 17, 1919, General Acts of Alabama, 1919, page 124, entitled "An Act to regulate the practice of public accountancy by creating a State Board of Public Accountancy, fixing its fees and emoluments; to prohibit the unlawful use of words, letters or other means of identification by unauthorized

persons as certified public accountants under this act, and to provide penalties for the violation of its provisions," is in conflict with the Constitution of the United States in that said act purports to authorize the revocation or cancellation of the registration of any certificate without defining or determining in advance what grounds or facts or acts shall be sufficient cause for such revocation;

And on the further ground that said Section of said act does not provide due process of law as required by Article 14, Section 1, of the Constitution of the United States;

And on the further ground that said section is in conflict with Article 1, Section 10, of the Constitution of the United States, in that Section 7 of said act is an ex post facto law and that it authorizes the said board, in its unbridled discretion, to punish by deprivation of registration certificate as a certified public accountant any
65 person, for the doing of an act which at the time done may have been recognized as innocent and subsequent to doing of such act may be condemned as sufficient cause for such deprivation; a

And on the further ground that said Section 7 of said Act does not define with sufficient certainty the meaning of the words "unprofessional conduct of the holder of such certificate or for other sufficient cause", used in said Section 7, and thereby submits to the unbridled whim of said Board the right to deprive a certified public accountant so registered, of a valuable right in the use of his professional appellation, and to injure and destroy his business and professional practice by casting upon him the stigma of revocation, without due process of law, and without a previous definition of the offence of which he may be convicted;

And on the further ground that said section 7 of said Act, in so far as it attempts to authorize the revocation of any certificate issued under said Act, or the cancellation of the registration of any certificate registered under the Act, for any unprofessional conduct of the holder of such certificate or for other sufficient cause, without defining "unprofessional conduct or other sufficient cause", is void for uncertainty and in conflict with the Constitution of the United States which inhibits any State from passing an ex post facto law or depriving a citizen of his rights without due process of law;

And on the further ground that said Act was offensive to the guarantees and limitations contained in the 5th and 6th Amendments to the Constitution of the United States, for the reason that the Legislature may not enact laws so as to delegate legislative power to courts and juries or commissions, or boards, or governmental agencies, to penalize indefinite acts and to deprive citizens of the right to be informed of the nature and cause of the accusations against them;

For that said Act provides no method of appeal from the judgment of said Board of Public Accountancy, nor is any means provided by which the accused could require the production of papers or documents, or procure the attendance of witnesses, and
66 thereby violates the due process of law clause of the Constitution of the United States;

And upon the further ground that said Act does not guarantee to the accused the right to be represented in person or by counsel at a hearing, nor does it require that the witnesses against him shall be sworn, nor does it require that the accused shall have the right to be confronted by his accusers, and is therefore in violation of the Constitution of the United States.

And a final judgment was rendered therein, as above stated, refusing your petitioner the relief sought in said suit and adjudging that there was no equity in his bill for the injunction, and affirming the decision of the Circuit Court of Montgomery County, Alabama, dissolving such temporary injunction and dismissing your petitioner's bill and taxing your petitioner with the cost of said suit.

This judgment, your petitioner shows, was erroneous, as shown, and upon the grounds stated, in the assignment of errors filed herewith.

That this petition for writ of error is applied for within three months after the application for a rehearing was denied by the Supreme Court of Alabama.

Wherefore, your petitioner, J. Harrod Lehmann, prays that a writ of error from the Supreme Court of the United States may issue in his behalf to the Supreme Court of the State of Alabama, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, this the 16th day of November, 1922. Erle Pettus, Benj. Heador, Attorneys for Petitioner.

67 [File endorsement omitted.]

THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, 3 Div., October Term, 1921-22.

567.

[Title omitted.]

Order Allowing Writ of Error.

[Filed Nov. 16, 1922.]

The above entitled matter coming on to be heard upon the petition of the appellant herein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Alabama, and upon examination of said petition and record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that the bond presented by said petitioner be and the same is hereby approved.

It is further ordered that the certificate of affirmance in said cause, heretofore issued to the Circuit Court of Montgomery County, Alabama, is hereby recalled;

And it is further ordered that the parties hereto are restrained from proceeding contrary to the original injunction until the final determination of the writ of error herein granted.

68 It is further ordered that the Clerk of this Court shall give notice to the appellees or their attorneys of record herein of this order.

Dated this the 16th day of November, 1922. Jno. C. Anderson, Chief Justice of the Supreme Court of the State of Alabama.

69 [File endorsement omitted.]

THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, October Term, 1921-22.

[Title omitted.]

Bond on Writ of Error.

[Filed Nov. 16, 1922.]

STATE OF ALABAMA,
Jefferson County:

Know all men by these presents, That J. Harrod Lehmann as Principal, and Fidelity and Deposit Company of Maryland, Sureties, are held and firmly bound unto the Alabama State Board of Public Accountancy, and Mayer W. Aldridge, James S. Edson, and George T. Rosson, Francis B. Latady and J. F. Kastner, in the sum of Five Hundred Dollars to be paid to the said obligees, their successors, representatives or assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 16th day of November, 1922.

Whereas the above named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Alabama;

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect and shall pay all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect. J. Harrod Lehmann. (Seal.) Fidelity and Deposit Company of Maryland, By Wm. P. Engel, Attorney-in-Fact. [Seal Fidelity & Deposit Company of Maryland, Incorporated 1890.]

STATE OF ALABAMA,
Jefferson County:

On this the 16 day of November, 1922, before me personally appeared J. Harrod Lehmann, to me known to be the person described in and who executed the foregoing bond, and acknowledged that he executed the same as his free act and deed. Naomi Jones, Notary Public, Jefferson County, Alabama. [Seal Naomi Jones, Notary Public, Jefferson County, Ala.]

70 STATE OF ALABAMA,
Jefferson County:

On this, the 16 day of November, 1922, personally appeared before me, William P. Engel, who being duly sworn deposes and says that he is the duly authorized agent of the Fidelity & Deposit Company of Maryland, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said Wm. P. Engel acknowledged said instrument to be the free act and deed of said corporation. Naomi Jones, Notary Public, Jefferson County, Ala. [Seal Naomi Jones, Notary Public, Jefferson County, Ala.]

I hereby approve the foregoing bond and securities. This the 16th day of November, 1922. John C. Anderson, Chief Justice of the Supreme Court of the State of Alabama.

71 **Writ of Error.**

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between J. Harrod Lehmann and State Board of Public Accountancy, et al., wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of its being repugnant to the Constitution or laws of the United States, and the decision was in favor of the validity of the statute, a manifest error hath happened, to the great damage of the said J. Harrod Lehmann, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, *and* then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what
72 of right, and according to the laws and customs of the United States should be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the 16th day of November, in the year of our Lord, One Thousand Nine Hundred and Twenty-two. [Seal of the United States District Court, Middle District of Alabama.] George Stuart, Clerk District Court of the United States for the Middle District of Alabama.

Allowed November 16, 1922. Jno. C. Anderson, Chief Justice Supreme Court of Alabama.

73 [File endorsement omitted.]

In the Supreme Court of Alabama, Third Division.

#567.

[Title omitted.]

Assignments of Error.

[Filed Nov. 16, 1922.]

Now comes the plaintiff in error, and respectfully submits that in the record proceedings, decision, and final judgment of the Supreme Court of the State of Alabama, in the above entitled cause, there is manifest error, in this:

First. That the court erred in holding that Section 7 of the Act of the Legislature of Alabama, approved February 17, 1919, entitled, an act to regulate the practice of public accountancy by creating a State board of public accountancy, fixing its fees and emoluments; to prohibit the unlawful use of words, letters or other means of identification by unauthorized persons, as certified public accountants under this act, and to provide penalties for the violation of its provisions, was a valid enactment, and no- in conflict with the Constitution of the United States.

Second. The court erred in holding that there was no merit in the contention of the plaintiff in error that Section 7 of the above referred to act of the legislature was void for indefiniteness and uncertainty as to the ground or causes which will justify the revocation or cancellation of a certificate or license issued under and by virtue of the act.

Third. The court erred in holding that if it be conceded that Section 7 of said act provides for the revocation and cancellation of a certificate when once issued, is void because of indefiniteness

and uncertainty as to its provisions, then the whole act, of course, would fall

Fourth. The court erred in refusing to hold that said Section 7 of said act was in conflict with the due process of law clause of the Constitution of the United States. Namely Section 1 of article 14 of said Constitution of the United States.

Fifth. The court erred in refusing to hold that Section 7 of said act of the legislature was in conflict with the ex post facto clause of the Constitution of the United States. Namely article 1, section 10 of said Constitution of United States.

Sixth. The court erred in holding that the only personal or property right with which the complainant claims the respondents are attempting to interfere, is the statutory right conferred upon him by the respondent board, acting under and by virtue of the act of the legislature above referred to, and that the right which the plaintiff in error sought to protect was not such a right as is protected by the guaranties of the Constitution of the United States.

Seventh. The court erred in holding that no constitutional, natural, or inalienable right of the complainant is threatened to be interfered with.

74 Eighth. The court erred in holding that the sole wrong of which the plaintiff in error complains is a threatened disturbance of a right or privilege conferred by statute.

Ninth. The court erred in holding that the respondents could not be restrained and enjoined from proceeding with the trial and interfere with the plaintiff in error's right to practice his profession, if, as contended, the entire act of the legislature was void.

Tenth. The court erred in not holding Section 7 of said act of the Alabama legislature unconstitutional and void for failing to secure to the plaintiff in error the right to be represented at said hearing in person or by counsel, and to have compulsory process for the attendance of witnesses in his behalf, and to be confronted with the witnesses against him, and to have compulsory process to procure documents and papers to be used as material evidence in his behalf; and for providing no method of appeal or review of the final decision.

Eleventh. The court erred in holding that the respondents had the right to take away from the plaintiff in error the right to use the words, "C. P. A.," or similar application, notwithstanding he might possess all of the qualifications of a certified public accountant.

Twelfth. The court erred in holding that the original bill of the plaintiff in error contained no equity, and in affirming the judgment of the court below.

Thirteenth. The court erred in holding that no right or privilege of the plaintiff in error granted by the Constitution of the United States, was about to be impaired or interfered with by the threatened action of the respondents.

Fourteenth. The court erred in holding that by the provisions of said act the plaintiff in error was not about to be deprived of property and liberty without due process of law.

Fifteenth. The court erred in holding that the provisions of said act, under section 7 thereof, do not deprive the plaintiff in error of

rights, privileges and immunities secured to other citizens of the United States and of the State of Alabama by the Constitution and laws of the United States.

Sixteenth. The court erred in holding that said act, and the authorities sought to be exercised thereunder and thereby, was within the constitutional power of the legislature of the State of Alabama.

Seventeenth. The court erred in holding that the provisions of Section 7 of said act do not serve to deprive the plaintiff in error of the right to earn a livelihood in the practice of his profession and the pursuit of his business, and the liberty of contract in reference to said business.

Eighteenth. The court erred in affirming the judgment of the lower court, the Circuit Court of Montgomery County, Alabama, sitting in equity, dismissing plaintiff in error's bill and dissolving the temporary injunction theretofore granted in said cause.

Nineteenth. The court erred in not holding that said act of the legislature was unconstitutional, in that said act failed to grant equal protection of the laws and the rights therein designated to every citizen of the United States.

Erle Pettus, Benj. Header, Attorneys for Plaintiff in Error.

75 In the Supreme Court of Alabama.

[Title omitted.]

Citation and Service.

UNITED STATES OF AMERICA, *ss:*

To the State Board of Public Accountancy et al., Greeting:

You are hereby cited and admonished to be at the Supreme Court of the United States at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the Clerk's office in the Supreme Court of Alabama, wherein J. Harrod Lehmann is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John C. Anderson, Chief Justice of the Supreme Court of Alabama, this the 16th day of November, in the year of Our Lord One Thousand, Nine Hundred and Twenty-two. John C. Anderson, Chief Justice Supreme Court of Alabama.

Filed in office this the 16th day of November, 1922. Robert F. Ligon, Clerk Supreme Court of Alabama.

Service of the foregoing citation is hereby accepted this the 29 day of Nov. 1922. J. J. Mayfield, Attorney of Record for State Board of Public Accountancy et al., Appellees in the Above-entitled Cause.

76 THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, 3 Div., October Term, 1922-23.

567.

[Title omitted.]

Appeal from Montgomery Circuit Court, in Eq.

Clerk's Certificate.

THE STATE OF ALABAMA,
Montgomery County:

I. Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered [in red ink] from one to seventy-five, both inclusive, contain a full, true, and correct copy of the record and proceedings, and of the opinion, of said Supreme Court in the above stated cause, as the same appear and remain of record and on file in this office; and contain also the petition for the writ of error, the order allowing the writ, a copy of the bond, the writ of error, the assignments of error, and the citation or notice of appeal.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the capitol, in the City of Montgomery, this the 29 day of November, 1922. Robert F. Ligon, Clerk of the Supreme Court of Alabama. [Seal of the Supreme Court.]

Endorsed on cover: File No. 29,292. Alabama Supreme Court. Term No. 742. J. Harrod Lehmann, plaintiff in error, vs. State Board of Public Accountancy et al. Filed December 18th, 1922. File No. 29,292.

FILED
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 170

J. HARROD LEHMAN,

Plaintiff in Error,

vs.

STATE BOARD OF PUBLIC ACCOUNTANCY, et al.,

Defendants in Error.

IN ERROR OF THE SUPREME COURT OF THE STATE OF ALABAMA

Brief of the Plaintiff in Error in Reply to Brief and Motion of Defendant in Error to Dismiss the Writ of Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 742

J. HARROD LEHMAN,

Plaintiff in Error,

vs.

STATE BOARD OF PUBLIC ACCOUNTANCY, et al.,

Defendants in Error.

IN ERROR OF THE SUPREME COURT OF THE STATE OF ALABAMA

Brief of the Plaintiff in Error in Reply to Brief and Motion of Defendant in Error to Dismiss the Writ of Error

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STATEMENT

This case is here on writ of error to review a final judgment of the Supreme Court of Alabama. Defendants in error have filed a motion to dismiss the writ of error or to affirm the judgment of the Supreme Court of the State upon the theory that this court is without jurisdiction and that no federal question is raised. Defendants in error file brief in support of this motion.

This submission is upon the motion to dismiss, and the brief and argument filed by the plantiff in error herewith is limited so far as possible to a discussion of the questions raised on this motion.

HISTORY OF THE CASE AS SHOWN BY THE RECORD

The plaintiff in error had for a long time been a public accountant in the State of Alabama. The Alabama Legislature by an act approved February 17, 1919, sought to regulate the fees and emoulments, and authorizing the use of the words "Certified Public Accountant" or "C. P. A." to those who measured up to the requirements. The act also makes it a misdemeanor and fixes a penalty for the violation of its terms. Plaintiff in error qualified under this act, and was issued the certificate contemplated. Section 7 of the law is as follows:

> "That the Alabama State Board of Public Accountancy may revoke any certificate issued under this act, or may cancel the registration of any certificate registered under this act, for any unprofessional conduct of the holder of such certificate, or for other sufficient cause, provided that written notice shall have been mailed to the holder of such certificate twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a day for a full hearing thereon by said board, and provided further that no certificate issued under this act shall be revoked until such hearing shall have been heard." (Sec. 7, Acts of Alabama 1919, p. 126.)

The Board of Public Accountancy never adopted any code or promulgated any rule, or defined or declared in any way what constituted professional or unprofessional conduct, or constituted sufficient cause for revocation of certificates.

Plaintiff in error was notified by a letter from the Secretary of the State Board that he should appear upon a day certain to answer charges and have a hearing before the Board to determine whether or not his certificate should be revoked. The return day was within twenty (20) days. However, plaintiff in error waived this requirement and insisted upon an immediate hearing, but the Board refused to go into the case at that time owing to the absence of Kastner of Chicago, the prosecuting witness. Statement in the brief of counsel for defendants in error misstates the facts in regard to this continuance. Before the cause came on to

be heard again before the State Board the plaintiff in error sued out in the Circuit Court of Montgomery, Alabama, a court of competent jurisdiction, an injunction against the State Board and other parties named to enjoin them from proceeding to try him under Section 7 of the Act. Temporary injunction was granted, which was subsequently, upon hearing, dissolved. Plaintiff in error appealed to the Supreme Court of Alabama, which court affirmed the Circuit Court of Montgomery County, and application for rehearing in the Supreme Court was overruled, thereby making the judgment final. From this final judgment of the court of last resort of the State of Alabama writ of error is prosecuted to the Supreme Court of the United States.

THE FEDERAL QUESTION

It was insisted, as shown by the transcript, in the Circuit Court that the rights of the plaintiff in error under the Constitution of the United States were denied by the provisions of Section 7 of said law. The rights of plaintiff in error under the Constitution of the United States were likewise insisted upon in the State Supreme Court.

The opinion of the Supreme Court of Alabama was per curiam, there being an able dissenting opinion by Mr. Justice Thomas. The majority opinion expressly decided that "no constitutional, natural or inalienable right of the complainant is threatened to be interfered with." (Page 25 of the Transcript). This opinion also

holds that Section 7 of the Act is not void for vagueness or uncertainty.

THE DISSENTING OPINION

As further showing that the federal question, and the right of the plaintiff in error under the Constitution of the United States were fully raised and gone into by the State Tribunal, I quote excerpts from the dissenting opinion of Mr. Justice Thomas:

> "Touching the remedy, constitutional guaranties are Section 6, containing the expression, 'Nor be deprived of life, liberty or property, except by due process of law,' and Section 7, 'That no person shall be accused or arrested or detained, except in cases ascertained by law, and according to the form which the same has prescribed; and no person shall be punished but by virtue of a law established and promulgated prior to the offense and legally applied.' State and Federal Constitutions contain like provisions that no ex post facto law shall be passed.—U. S. Const. Sect. 9 (3)." (Page 29 of the Transcript.) * * *
>
> "If, in the discharge of that administrative function in the State Board for revocation and cancellation of the certificate of 'Certified Public Accountants' granted by authority of law, that Board should undertake to penalize for past conduct of a registrant (which conduct should have been discovered by the Board before the issue of the certificate and from the discovery of which it was not prevented by fraud of the applicant that entered

into his examination and determination of his qualification or fitness for the issue of his certificate), and give his crime and punishment a retroactive or ex post facto effect by a definition of unprofessional conduct or other sufficient cause for revocation, such retroactive application and punishment would be offensive to provisions of the respective constitutions. Constitutional inhibitions as to State statutes unduly limiting and regulating private businesses were the subjects of discussion in Fox vs. Washington, 236 U. S. 273, 59 L. Ed. 573; Waters-Pierce Oil Co. vs. Texas, 212 U. S. 86, 53 L. Ed. 417; Miller vs. Strahl, 239 U. S. 426; Nash vs. U. S., supra; Omaechevarria vs. Idaho, 246 U. S. 343, 62 L. Ed. 763; Arizona Copper Co. vs. Hammer, 250 U. S. 400, 53 L. Ed. 1058." (Page 37 of the Transcript.) * * * *

"In Czarra vs. Medical Super., supra, construing an Act of Congress providing that any licensee of the medical board was subject to have his license revoked upon being found guilty of 'unprofessional or dishonorable conduct,' was held insufficient to inform the accused of the nature and cause of accusations against him preserved by the Sixth Amendment to the Constitution of the United States, requiring that one be informed by the indictment or information presented against him, since the fundamental requisite is that the crime or offense with which he stands charged shall be defined with reasonable precision, and that he be informed by the legislature 'with reasonable precision' what acts are intended to be prohibited." (Page 38, Transcript of the Record.) * * * *

"The provisions of the Sixth Amendment to the

Constitution of the United States provide that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation, held violated by said provisions of the Act in the total absence of any definition of what constituted a 'crowded car,' an important element, said not to be left to conjecture or supplied by the court or jury. The reason given for the holding was that 'the dividing line between what is lawful and unlawful cannot be left to conjecture;' that the 'citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions,' and citing the quotation we have given above from U. S. vs. Reese, supra." (Page 38 of the Transcript) * * * *

"The trial of complainant, in the absence of a reasonable definition of the causes for revocation of certificate under the provisions of Section 7 of the act, would leave such arbitrary discretion in the state board, which would authorize or be susceptible of a different application to the same facts, dependent on the one hand on who composed the members of that state board, and on the other on who was the subject of the investigation or trial. This arbitrary power is contrary to the letter and spirit of both state and federal constitutions. And to save the statute, a reasonable discretion in defining causes of revocation must be first exercised before any member may be lawfully placed on trial by the board for revocation of his license." (Page 39 of the Transcript).

WRIT OF ERROR

This writ of error is sued out in strict accordance with Section 237 of the Judicial Code.

QUESTION PROPERLY RAISED

The Federal question in this case was properly raised and insisted upon at every stage of the procedure as shown by the transcript.

Merchants National Bank of Cincinnati vs. Wehrmann, 202 U. S. 299, 50 L. Ed. 1036.

Pennsylvania R. R. Co. vs. Public Service Commission of Pennsylvania, 250 U. S. 566, 63 L. Ed. 1142.

> "A decision of the highest court of a state sustaining the condemnation of certain water rights of riparian owners who asserted that such condemnation would be the taking of private property without due process of law, contrary to U. S. Const. 14th Amend., is reviewable in the Federal Supreme Court, although the state court discusses only matters of state law, a dissenting judge, however, intimating that the taking infringed the Federal Constitution." —*Hendersonville L. & P. Co. vs. Blue Ridge I. R. Co.,* 243 U. S. 562, 61 L. Ed. 900.

THE RIGHT SOUGHT TO BE PROTECTED

I cannot better express the right which plaintiff in error sought to protect than by quoting from the dissenting opinion with authorities cited:

"It cannot be successfully maintained that the right in question is not a valuable one and will not be protected. If necessary to protect such right, injunctive process may be invoked, for one's profession is his capital.—Constitution of Alabama, Sect. 1; Hardie-Tynes Mfg. Co. vs. Cruise, 189 Ala. 66; Franklin Social Club vs. Phil Campbell, 204 Ala. 259; State vs. Goldstein, in M. S.; Hill vs. Wallace, U. S. S. C. Adv. Ops. 1921-22, 527, 66 L. Ed. ____; Booth vs. Illinois, 184 U. S. 425, 428, 46 L. Ed. 623, 626; Allgeyer vs. Louisiana, 165 U. S. 578, 41 L. Ed. 832; N. Y. L. Ins. Co. vs. Dodge, 246 U. S. 357; Adams vs. Tanner, 244 U. S. 590." (Page 29 Transcript).

Not only was the right which plaintiff in error was seeking to protect a substantial property right, which is recognized and protected by the law and by the courts, but the very "hearing," the attempted public trial to which he was to be subjected, and which, under the very terms of the statute, must have been arbitrary, would in itself have been destructive of his reputation and his business, and would have worked irreparable injury.

No method to limit the hearing, no definitions of offense, no rules of evidence, no process to compel production of records or to procure attendance of witnesses, under the guise of a hearing the plaintiff in error was to have been crucified to appease those who desired to regale themselves upon such a public spectacle, and in the face of this learned counsel states that plaintiff in error will not seriously insist that he had any rights to be protected under the laws of the land, or that he should

have waited until after the irreparable harm was done, and then sought, by some form of certiorari or other remedial writ, no appeal being provided for in the statute, to cure the wrongs already done him.

The right to practice one's profession is such a right as is recognized and protected.

> "If the right of a professional man or one engaged in a business depending upon personal attention, educational qualifications, or peculiar fitness for the work at hand, to pursue a legitimate avocation, or to practice his profession, is involved, I would be perfectly willing to hold that the mere right to pursue such business or profession is a right that will be protected by the courts, albeit there are some who may say that such right is personal."

Anno. Cases 1917-D, p. 682.
Truax vs. Raich, Sup. Ct. Rep. 33-34, 60 L. Ed. 131.

It is certain that the Legislature could not delegate to the State Board of Public Accountancy the power to make laws, and declare what acts are, and what are not, a violation sufficient to try a person accused and justify the revocation of his certificate. But, if such power had been granted in the act, the undisputed fact remains that the Board never exercised any such authority, and never, in any manner, promulgated any code of ethics or standard of professional conduct, or defined in any way, shape, form, or fashion what was permitted to the holder of such certificate, or what was denied to him, or what would

constitute sufficient cause upon which to base his conviction.

No person from the terms of this act could inform himself or be informed as to when he would be keeping the law, or when he would be doing LESE MAJESTY against the august board.

The Supreme Court of the United States in the case of *United States vs. Cohen* has covered this phase of the situation as regards the criminal statute in unmistakable language. We quote from the opinion:

> "Therefore, because the law is vague, indefinite, and uncertain, and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained. The indictment was therefore quashed. * * * * That it is hereby made unlawful for any person wilfully * * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, constituted a fixing by Congress of an ascertainable standard of guilt, and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion, so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subject-matter of the investigation which

it authorizes to no element essentially inherent in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which ,in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury. And that this is not a mere abstraction finds abundant demonstration in the cases now before us; since in the briefs in these cases the conflicting results which have arisen from the painstaking attempts of enlightened judges in seeking to carry out the statute in cases brought before them are vividly portrayed. As illustrative of this situation, we append in the margin a statement from one of the briefs on the subject. And again, this condition would be additionally obvious if we stopped to recur to the persistent efforts which, the records disclose, were made by administrative officers, doubtless inspired by a zealous effort to discharge their duty, to establish a standard of their own to be used as a basis to render the section possible of execution.

"That it results from the consideration which we have stated that the section before us was void for repugnancy to the Constitution."

United States vs. Cohen, 255 U. S. 81, 65 L. Ed. 516.
Kansas vs. Crawford, 104 Kansas 141, 177 Pacific 360, 2 A. L. R. 880, 5 A. L. R. 100.
U. S. vs. Reese, 92 U. S. 214, 23 L. Ed. 563.

In California the Legislature sought to specify and define prohibited acts. It was there held that this language was void because it was unreasonable, indefinite and uncertain. It was also held that the right to practice medicine is like the right to practice any other profession, a valuable property right, in which one is entitled to be protected and secured.

Hewitt vs. State Board of Medical Examiners, 148 Cal. 590, 3 L. R. A. New Series 896, 7 Annotated Cases 750.

"When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

Yick Wo vs. Hopkins, 118 U. S. 356-369, 6 Sup. Ct. 1064, 1071 (30 L. Ed. 220).

"(4) *The contention that the courts will not interfere with the action of the board, because they were in the exercise of a discretion delegated by the General Assembly, is untenable. They were not in the exercise of a discretion. The act authorized none. Guilt is not a matter of discretion. To pronounce one guilty of 'grossly unprofessional and dishonest conduct' is to adjudicate a fact, and a fact involving moral turpitude. The necessary result thereof is a refusal of the right to practice the profession of optometry. When one's guilt is fixed the*

duty of the board is mandatory. The act provides that they 'shall' refuse to issue the certificate of registration."

Mott vs. Georgia State Board of Optometry, et al., Southeastern Reporter, Vol. 95, No. 12, pp. 869-870.

Ex parte Jackson, (1885) 45 Ark. 164.

OFFENSE NOT DEFINED

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government."

U. S. vs. Reese, 92 U. S. 214, 23 L. Ed. 563.

"But it is insisted that, because this is not a case of prosecution for crime, the doctrine of those cases has no application. This very question came before the court in Czarra vs. Medical Supers., 25 App. D. C. 443, in which the court held that the doctrine was applicable, and cited with approval the cases just referred to. Shepard, Ch.j., speaking for the court, said: 'The police power of every state warrants the requirement of the possession of all reasonable qualifications by those who wish to engage in the public practice of medicine, and, incidentally, the extension of a wide discretion to those agencies charged with the duty of inquiry and determination. But we do not agree that the exercise of the same wide discretion can be extended to a

case where, when one has been regularly admitted, the deprivation or forfeiture of his license is sought under another or an independent provision of the same statute. The right to practice the profession once regularly obtained by compliance with the law becomes a valuable privilege or right in the nature of property, and is safeguarded by the principles that apply in the protection of property lawfully acquired. AND THESE ARE OF THE SAME GENERAL NATURE, THOUGH NOT IN ALL PARTICULARS AS THOSE WHICH SAFEGUARD HIM WHEN PROSECUTED FOR THE COMMISSION OF A MINOR OFFENSE."

5 A. L. R. page 90.

"The underlying question involved in all cases that may arise is whether the courts can uphold and enforce a statute whose broad and indefinite language may apply, not only to a particular act about which there would be little or no difference of opinion, but equally to others about which there might be radical differences thereby devolving upon the tribunals charged with the enforcement of the law the exercise of an arbitrary power of discriminating between the several classes of acts."

5 A. L. R. pp. 90 and 91.
U. S. vs. L. & N. R. R. Co., 176 Fed. 942.
U. S. vs. Blasengame, 116 Fed. 645.

INJUNCTION THE PROPER REMEDY

It is clear that were the proceedings before the State

Board of Public Accountancy permitted to proceed plaintiff in error would be subjected to irreparable injury.

> "It may be said, however, that an injury is irreparable when it is of such a nature that the injured party cannot be adequately compensated therefor in damages, or when the damages which result therefrom cannot be measured by any pecuniary standard."

10 *Ency. of Pleading & Practice*, p. 952.

> "An injunction is proper to restrain an officer from acting under an unconstitutional or otherwise invalid statute, where irreparable injury to complainant will result therefrom."

22 Cyc. page 884, Section 3.

> "A statute which authorized the state board of health to revoke the certificate of a practicing physician for 'grossly unprofessional conduct of a character likely to deceive or defraud the public,' was held to be invalid in that it conferred upon the board power to revoke a license for unprofessional conduct without furnishing a standard by which such conduct could be measured. Matthews vs. Murphy, 63 S. W. Rep. 785, 23 Ky. L. Rep. 750. Likewise, that part of a statute which authorized the revocation of a physician's certificate upon conviction of 'unprofessional or dishonorable conduct,' without defining the acts which should constitute such conduct, was held to be void for uncertainty."

Czarra vs. Board of Medical Supervisors, 25 App. Cas. (D. C.) 443.

Particular attention is called to the foregoing well reasoned and well considered case of Matthews vs. Murphy, 23 Kentucky L. Rep. 750. This is a case directly in point, and the argument of the court in that particular is convincing.

> "A court of equity has jurisdiction to entertain a suit to enjoin the enforcement of an unconstitutional statute or order of a state commission, although the manner of enforcement provided for is by criminal proceedings for its violation."

L. & N. R. R. Co. vs. R. R. Com. of Ala., 191 Fed. Rep. 757 (2nd head note).

> "The demurrer challenges the jurisdiction of a court of equity to enjoining criminal proceedings or qui tam actions, or to entertain the proceeding here, because it is, in reality, a suit against the state. That the suit is not a proceeding against the state and that a court of equity should entertain such a suit and grant the relief prayed in a proper case has been put beyond the pale of controversy, adversely to defendants, by the decisions of this court and of the Supreme Court. Louisville & Nashville Railroad Co. vs. Railroad Commission of Alabama (C. C.), 157 Fed. 944; Ex Parte Young, 209 U. S. 123, 28 Sup. Ct. 411, 52 L. Ed. 714, 13 L. R. A. (N. A.) 932."

L. & N. R. R. Co. vs. R. R. Com. of Ala., 191 Fed. Rep. 763.

Lindsley vs. Natural Gas Co., 162 Fed. 954.

Lusk vs. Town of Dora, 224 Fed. 650.

As to the suggestion that the plaintiff in error should wait until after the irreparable injury has been inflicted upon him, and then resort to the common law writ of certiorari, it may be said that no provision is made constituting the said State Board of Accountancy a court of record. What records it would keep on such a hearing as is proposed does not appear. Certainly the statute provides for none, and it would not afford an adequate remedy for the reason that the evidence could not be brought up and reviewed.—4 Ency. of Pleading & Practice, p. 221, et seq.

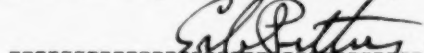
CONCLUSION

It is clear even upon a casual examination of this record that substantial property rights of the plaintiff in error were about to be taken from him without due process of law; that the Alabama Legislature has sought to commit to a board an arbitrary and undefined power; that the board was proceeding to exercise such power by attempting to try plaintiff in error for an alleged offense committed as charged in part at least before the act in question became a law; that the sort of trial or hearing to which he was to have been subjected in the very nature of things would have been destructive of his reputation and the right to practice his profession or calling; that the proposed proceeding was in violation of Section 1, Amendment 14, of the Constitution of the United States, and also of Article 1 of Section 10 of the Constitution of the United States, and was void for uncertainty, and in its very nature and spirit constituted a

defiance of every right enjoyed by a citizen of the United States, and protected and guaranteed by the Federal Constitution.

Upon the hearing of this preliminary motion to dismiss, it is most earnestly insisted that the same is without merit, that the motion should be overruled and denied, and this case set down regularly to be heard upon the merits with an opportunity for argument and the submission of brief and authorities by the plaintiff in error.

All of which is respectfully submitted,



Attorney for the Plaintiff in Error.

Supreme Court of the United States

October Term, 1922.

No. 742.

J. HARROD LEHMAN, *Plaintiff in Error,*

vs.

STATE BOARD OF PUBLIC ACCOUNTANCY, *Et Al.*

In Error of the Supreme Court of the State of Alabama.

Motion to Dismiss Writ of Error, or to Affirm the Judgment of the Supreme Court of Alabama, and Brief in Support Thereof.

MOTION.

Come the defendants in error, State Board of Public Accountancy of Alabama, et al., and move the Court to dismiss the writ of error filed in this cause, or to affirm the decision of the Supreme Court of Alabama which is sought to be reviewed by such writ of error, and for grounds of this motion assign the following:

First: Because this Court has no jurisdiction to review on writ of error the questions, matters and things sought to be reviewed in this Court by writ of error.

Second: The assignment of error, construed in connection with the petition for writ of error, fail to state any Federal questions decided adversely to the plaintiff in error by the Supreme Court of Alabama.

Third: Because the alleged Federal questions so attempted to be set forth in the petition for the writ

of error, and in the assignments of error, or kindred questions which cannot be distinguished from the questions here sought to be reviewed, have been decided so many times by this Court adversely to the contention of the plaintiff in error that they should be considered and treated as frivolous, and to show that the writ is taken for delay only.

JAMES J. MAYFIELD,
Attorney for Defendants in Error.

Brief and Argument in Support of Motion to Dismiss, or to Affirm.

STATEMENT OF CASE MADE BY RECORD.

Appellant is a certified public accountant by virtue of an act of the Legislature of Alabama, approved February 17, 1919.—Acts 1919, p. 124, *et seq.*

The act in question creates a Board of Public Accountancy, which is composed of the defendants in error. The act authorizes the Board to examine applicants for certificate or license to practice the business or calling of public accountant in the State of Alabama, and to issue certificates to those whom the Board deems qualified. The Board examined plaintff in error as an applicant and granted to him a certificate. The bill also authorized the Board to revoke or cancel certificates heretofore issued, upon complaint of other public accountants, but only after notice and a hearing of the application to cancel or annul the certificate. Complaint was made against plaintiff in error by other public accountants, notice was given him by the Board of the complaint, and a day set for trial. On the day set he appeared and asked a continuance of the hearing to a future date. His reqquest

was gr ed, but instead of appearing upon the day fixed he filed his bill in the Chancery Court of Montgomery County, Alabama, and sought to enjoin the Board of Accountancy and the members thereof from proceeding to hear the charges preferred against him, and to prevent them from ultimately cancelling or annuling his certificate or license. Respondents to this bill filed a demurrer to the bill for want of equity, and also made a motion to dissolve the temporary injunction. The demurrer was sustained and the motion to dissolve granted. From that judgment the plaintiff in error prosecuted his appeal to the Supreme Court of Alabama, and the judgment and decree of the circuit court was affirmed, and from that judgment or affirmance by the Supreme Court of Alabama plaintiff in error prosecutes this writ of error. The sole relief sought by his bill was injunctive. The injunctive relief sought was to enjoin the Board or the members thereof from hearing charges that were preferred against plaintiff in error, and to enjoin the Board from cancelling or annuling his certificate.

BRIEF AND ARGUMENT.

It will be observed that the only possible right of defendant that the Board was interfering with, or threatening to interferene with, was the statutory right which conferred upon him by virtue of the act of the Legislature above referred to,, and complained of in the writ of error. The same statute which confers the right to grant the plaintiff in error a certificate, as a public accountant, also provided how and when the certificate could be cancelled or annuled. It will also be observed that this cerificate authorized by

the statute is not a prerequisite or a sine qua non to the plaintiff in error practicing the business or calling of an accountant in the State of Alabama. It will also be observed that cancelling or annuling the certificate when once granted does not deprive him of the right to continue to practice the business or calling of an accountant, though he does thereby lose the certificate granted him by the Board that he is a qualified public accountant. Consequently, it conclusively appears that no natural, inalienable or constitutional right of the plaintiff in error has been interfered with, or even threatened. Likewise, no private right of his is interfered with or threatened. The right is purely a statutory and public right. Consequently, no Federal question is presented, involving any constitutional or private right of the plaintiff in error. If the Legislature had the power to confer this upon the complanant—and certainly he will not be heard to insist that it did not have such a right,—it had the right and power to take it away or to prescribe the terms or conditions upon which it might be forfeited. Plaintiff in error cannot enjoy the benefits or privileges conferred by the statute without also bearing the burdens and inconveniences imposed by it. The main contention of plaintiff in error in the circuit court, and in the Supreme Court of Alabama, was that Section 7 of the State statute in question was unconstitutional and void because it offended against Section 45 of the State Constitution, which Section provides, among other things, "that each law shall contain but one subject which shall be clearly expressed in its title." The circuit court and the Supreme Court of Alabama held that the statute did not violate this provision of the Constitution; the contention of

plaintiff in error being that Section 7 of the act, providing for cancelling and annuling the license, was not germane to the title of the bill which was enacted into a law. This contention was frivolous, and the court so held. The contention was also made in the Supreme Court of Alabama that Section 7 of the act was void because too indefinite and uncertain as to the ground or causes which would justify the revocation or cancellation of the certificate or license issued under and by virtue of the act. This contention was also held to be without merit. This Court, of course, will not review or reverse the Supreme Court of Alabama in construing this statute, unless the construction should deny to the plaintiff in error some right secured or guaranteed to him by the Constitution of the United States or some act of Congress. Moreover, the Supreme Court of Alabama held that if the contention of plaintiff in error were correct,—that Section 7 of the act in question was void,—that then the whole act would be void, for the reason that the court could not say that the Legislature would have passed the act in question, authorizing the Board to issue certificates, unless there was some provision by which the certificate could be cancelled or forfeited, and as Section 7 was the only provision of the act dealing with this subject, to hold that this Section was void would render the entire act void; and as the sole right of the plaintiff in error to his certificate was based upon this statute, and if the statute was void it conferred no right, he could not be injured by the cancellation or forfeiture of an absolutely void and worthless certificate. This Court, of course, will not review or reverse the decision of the Supreme Court of Alabama as to this construction which it placed

upon the statute, and which is evidently correct. The Supreme Court of Alabama also decided that if the act in question were void,—that is, if only Section 7 of the act was void and the other part could stand,—that there was absolutely no equity in the bill, for the reason that neither the trial court nor the Supreme Court of Alabama could know, in advance of a hearing of the charges preferred against the plaintiff in error, that the Board would revoke or cancel his certificate or license, but the court must presume that the Board would act in accordance with law and justice. It must be observed that the bill in question was not to restore to the complainant his right to a certificate or license of which he had been unlawfully deprived, nor compel the Board to issue to him a license or certificate to which he was entitled, but the bill is essentially one to prevent the Board from hearing or considering charges which had been preferred against the complainant. In other words, if there is any equity in this bill, any complainant could enjoin the Board from ever hearing any charges that were preferred against those to whom certificates or licenses have been granted by the Board. It should also be observed that the rights of the plaintiff in error in this case are unlike those of physicians, dentists, school teachers, etc., to practice their calling or profession, because such professions can not be practiced without a license, and when the license is revoked or cancelled the law prohibits the person holding the license or certificate from practicing certain professions until another license or certificate is obtained. The State Legislature has the undoubted power to delegates certain governmental powers for the more efficient administration of the law, subject, however, to certain limi-

tations of the Constitution, and these limitations have not been exceeded in this case.—*Parke v. Bradley,* 204 Ala. 455; *Railroad Commission v. A. N. Ry. Co.,* 182 Ala. 357, which cases review and cite State and Federal authorities on the subject. The Supreme Court of Alabama, and this Court, have repeatedly decided that equity rarely interferes by injunction with proceedings of inferior boards, commissions, or tribunals, like the Board of Public Accountancy in Alabama, when such Boards are clothed with special governmental powers, even though such powers be quasi judicial as well as administrative. The instances are rare where equity will grant injunctive relief to regulate or control the proceedings of such tribunals.—*Ewen v. St. Louis,* 5 Wallace (U. S.) 413; *Retz v. Michigan,* 188 U. S. 505. This Court has repeatedly held, in line with the holding of the Supreme Court of Alabama, that state legislatures, in creating such boards and conferring such powers on them, do not exceed powers authorized, or confer powers not authorized by the State and Federal Constitutions. The doctrine as well settled by the text books, as well as adjudicated cases, that courts of equity do not interfere by injunction for the purpose of controlling the action of public officers who constitute inferior quasi judicial tribunals, such as Boards of Supervisors, Commissioners of Highways, Boards of Public Examiners to practice medicine, dentistry, etc.; nor will courts of equity review or correct errors of such proceedings, the proper remedy being at law by a writ of certiorari, mandamus, or other appropriate remedy.—2 High on Injunction, p. 1324, Sec. 1311. Not a single authority cited by counsel for plaintiff in error, on the trial in the circuit court or in the Su-

preme Court of Alabama, will support the equity of the bill in question. The only case cited in which injunctive relief was granted was where a board similar to the one in question was attempting to hold their meetings and exercise their jurisdiction beyond the confines and jurisdiction of the State which created the board and of course limited its authority and jurisdiction.

We respectfully urge, upon the consideration of this Court, that it will not review or revise the decision of the Supreme Sourt of Alabama in this case, for the reason that no Federal question is presented; and if it could be said, which it cannot, that any Federal question is presented by the record other than the mere statement of it in the assignment of errors, that question was decided correctly by the Supreme Court of Alabama. How counsel for this plaintiff in error can seriously contend that their bill filed in the circuit court contained equity, and that that court could and should have enjoined the defendants in error from hearing the complaints filed against this plaintiff in error, which complaints were authorized by the statute, passes our comprehension. If this bill contains equity, then the Board of Public Accountancy created by this statute never could function to the extent of revoking, cancelling or annuling certificates or licenses if the holder of the certificate or license was willing to file a bill in equity alleging that the statute was void and that the complaint filed was insufficient or evoked by prejudice or other improper motive.

Respectfully submitted,
JAMES J. MAYFIELD,
Attorney for Defendants in Error.

LEHMANN *v.* STATE BOARD OF PUBLIC ACCOUNTANCY ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

No. 170. Motion to dismiss or affirm submitted November 26, 1923.—Decided December 10, 1923.

A state statute authorizing a board to grant certificates of registration to qualified persons as certified public accountants, and empowering it, upon notice and hearing, to cancel any registration so granted for unprofessional conduct of the certificate holder, but leaving the individual free to practice accountancy without procuring a certificate and after a certificate granted has been canceled, *held*, not violative of the due process clause of the Fourteenth Amendment or the provision of the Constitution against *ex post facto* laws, in the case of one who, having obtained such a certificate, sought to enjoin the board from hearing charges looking to its revocation, upon the ground that the statute conferred arbitrary power by not defining more specifically the cause for revocation and that the board had promulgated no definitive rules. P. 397.

208 Ala. 185, affirmed.

ERROR to a decree of the Supreme Court of Alabama affirming a decree which dismissed a bill to enjoin a state board and its members from hearing charges preferred against the plaintiff looking to the revocation of his certificate as a public accountant, and to enjoin the other defendants, who had made the charges, from prosecuting them. The section of the Alabama statute governing the proceedings before the board is set forth below.[1]

[1] "That the Alabama State Board of Public Accountancy may revoke any certificate issued under this act, or may cancel the registration of any certificate registered under this act, for any unprofessional conduct of the holder of such certificate, or for other sufficient cause, provided that written notice shall have been mailed to the holder of such certificate twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a day for a full hearing thereon by said board, and provided further that no certificate issued under this act shall be revoked until such hearing shall have been heard." Acts 1919, p. 126, § 7.

Mr. James J. Mayfield, for defendants in error, in support of the motion.

Mr. Erle Pettus, for plaintiff in error, in opposition to the motion.

Mr. JUSTICE MCKENNA delivered the opinion of the Court.

By a statute of the State, a board denominated the Board of Public Accountancy was created. The Board has authority to examine applicants for certificates or licenses to practice the business or calling of public accountant and to issue certificates to those whom the Board deems qualified.

The Board is given power to cancel the certificate granted "for any unprofessional conduct of the holder of such certificate, or for other sufficient cause," upon written notice of 20 days and a hearing thereon. The defendants in error, Aldridge, Edson and Rosson, constitute the Board.

Complaint was made against plaintiff in error by the other defendants in error, who are public accountants, a day set for hearing and notice thereof given to plaintiff in error as required by the statute.

He appeared at the time appointed, but subsequently brought this suit praying that the Board and its members be enjoined and restrained from hearing the charges preferred against him, or from making or entering any order revoking or attempting to revoke the certificate issued to him, or from interfering in any way with the practice of his profession as such certified public accountant. It was also prayed that the other defendants in error be enjoined from prosecuting the charges that they had preferred.

A temporary restraining order was issued and an order to show cause why it should not be made permanent.

The bill was dismissed on demurrer for want of equity, and on appeal to the Supreme Court the decree was

affirmed. The Chief Justice of the court then granted this writ of error.

The ground of it, and the reliance here, is, expressed in several ways, that the statute of the State is in conflict with the constitution of the State and also in conflict with the Constitution of the United States, the latter in that the statute deprives plaintiff in error of his property without due process of law, and subjects him to an *ex post facto* law.

The bill is very long. Its important facts are as follows: Plaintiff in error had "by experience and assiduous attention to his duties built up a large and lucrative business." Upon the appointment of the Board he applied for, and was issued, a certificate, after standing the tests and examinations prescribed, and since that time he has been practicing his profession as a certified public accountant.

The Board has never adopted any code or promulgated any rules or definition of what is or is not professional conduct, or what is sufficient cause for the revocation of a certificate.

He appeared before the Board at the day appointed for the hearing of the charges against him and was informed by the Board that there were no rules in effect to govern or control the hearing, and evidence would be received with some liberality. The hearing was continued until January 26, 1922, and plaintiff in error notified to be back on that day for the purpose of being tried.

It is nowhere averred in the charges against him that anything that he had done was wrongful or unlawful, the only allegation being that the alleged acts complained of were surreptitious.

The acts are enumerated and it is expressly denied that he was guilty of anything wrongful, surreptitious or unlawful.

It is further averred that the Board has prejudged his acts, and that the determination by the Board as to

whether his certificate should be revoked rests wholly within the arbitrary, uncontrolled and unappealable judgment of the Board.

The unconstitutionality of the act is averred both under the state and federal constitutions.

The contention that the statute and the powers it confers upon the Board and the manner of their exercise are in derogation of the constitution of the State is decisively decided against by the opinion of the Supreme Court of the State and, we may say, that there is persuasion in the reasoning of the court against the contention that the statute is in conflict with the Constitution of the United States. That is, that the statute is in effect an *ex post facto* law or, if enforced against him, will deprive him of his property without due process of law.

The opinion of the court sustained the Board, its powers, and the manner of executing them, but refrained from expressing an opinion of the right or remedy of plaintiff in error. It said, "It is neither necessary nor proper for this court to now decide what remedy, if any, would be available to the appellant [plaintiff in error], if his certificate or license should be improperly or illegally revoked or canceled." In other words, the court declined to anticipate the action of the Board; it decided only that if the State had the power to confer a certificate on the plaintiff in error through the Board, it had the power, through the Board, to take it away or to prescribe the terms and conditions upon which it might be forfeited. And the court further said that the appeal was without equity, since neither the trial court nor it could know in advance of the hearing that the Board would sustain the charge.

The reasoning is conclusive. The procurement of a certificate was deemed of value by plaintiff in error. It was the confirmation of his reputation, giving to it the

sanction of an official investigation and judgment. He knew the condition of its issue, knew that the conduct that secured it was a condition of its retention, that for inconstancy of merit it could be forfeited, and forfeited if it had been improvidently granted or procured by concealment or deception. And necessarily so, or the certificate would be a means of pretense.

Plaintiff in error puts some stress upon the absence of rules by the Board, urging that the statute is in conflict with the Constitution of the United States because it purports to authorize the revocation of a certificate "without defining or determining in advance what grounds or facts or acts shall be sufficient cause for such revocation." Such absence permits, it is asserted, arbitrary action. We cannot yield to that assertion or assume that the Board will be impelled to action by other than a sense of duty or render judgment except upon convincing evidence introduced in a regular way with opportunity of rebuttal. We certainly cannot restrain the Board upon the possibility of contrary action. Official bodies would be of no use as instruments of government if they could be prevented from action by the supposition of wrongful action.

This Court and other courts have decided that a license or certificate may be required of a physician, surgeon, dentist, lawyer or school teacher. *Douglas* v. *Noble*, 261 U. S. 165, has pertinent comment upon the power of the legislature in that regard. The Supreme Court in the present case construed the statute as not so exacting of public accountants. In other words, it was decided that the indicated professions require a license or certificate but that a public accountant requires none. And it was decided that a public accountant gets no right of business from the grant of a certificate; he loses no right of business by its cancellation.

The statute is not, nor are the proceedings before the Board, such as plaintiff in error conceives them. The

cases he cites are, therefore, not pertinent and need no review.[1]

The motion to affirm must be granted.

So ordered.